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on her own home and credit card debts (an amount totaling over \$123,000), Winther would move in with Dickinson and pay half of the new mortgage payment for the life of the loan. Winther further promised to secure her financial payment obligations to Dickinson by giving him a deed of trust against her own home or a quitclaim deed in which Dickinson would be jointly on title with Winther. Because the parties were romantically involved with one another and contemplating marriage, Dickinson agreed to do so.

Winther urged Dickinson to apply for a \$355,000 loan. This would be sufficient money to pay off Dickinson's current \$96,980 mortgage loan balance, the \$53,300 that Dickinson owed his ex-wife and her attorney from Dickinson's recent divorce, Winther's \$123,000 mortgage and credit card debts, and the loan fees and closing costs – leaving some extra money for home refurbishing and/or other items.

When Dickinson applied for the \$355,000 loan, however, he was informed that he did not qualify for that large of a loan on his current income. Dickinson earned only about \$3,000 a month. The only way to qualify for the loan was to put Winther on title to Dickinson's home. By doing so, both of their incomes could be used and the loan would be approved. Winther urged Dickinson to proceed

and to put her on title to his home. Dickinson did so and the loan was quickly approved and funded. In the process, Winther's mortgage on her own and credit card debts were paid off at closing from the Dickinson loan proceeds.

In March 2007, after paying her share of Dickinson's monthly mortgage payment for just 18 or 19 months, Winther closed the parties' joint checking account from which the mortgage payments were being electronically paid and transferred all remaining funds to herself.

Winther's actions put the Dickinson mortgage loan into default status and put Dickinson on the edge of financial ruin – facing imminent foreclosure and the loss of his home of 17 years unless he could cure the default and/or get Winther to honor her financial obligations to him. Winther refused to pay anything further on the loan and told Dickinson that her home was “paid for” and she did not care if Dickinson was forced into bankruptcy or if he lost his home to foreclosure.

Dickinson temporarily cured the mortgage default by selling some personal property items, but he knew he could not continue to do

so. Dickinson also found a lender who would refinance his property again, but Dickinson had to get Winther off his title to do so. Winther seized this opportunity by giving Dickinson a take-it-or-leave-it offer: Dickinson could either “release” Winther of all claims and financial obligations or Winther would continue to do nothing.

Faced with the prospects of losing his home of 17 years and all remaining equity or acceding to Winther’s extortionate demands, Dickinson met Winther the next day and signed the “releases” over objection. Winther then gave Dickinson the needed quitclaim deed. Dickinson immediately refinanced his mortgage loan and then sued Winther for breach of contract, fraud, unjust enrichment and other claims.

## **II.**

### **ASSIGNMENTS OF ERROR**

1. The trial court erred in entering the May 2, 2008 Order granting Winther’s motion for summary judgment and dismissing Dickinson’s claims with prejudice as a matter of law.

2. The trial court’s Findings of Fact and Conclusions of Law filed May 2, 2008 are erroneous.

3. The trial court abused her discretion by entering the May 2, 2008 Order denying Plaintiff's Motions to Supplement and Enlarge.

4 The trial court abused her discretion by entering the May 16, 2008 Order denying Plaintiff's Motion for Reconsideration.

5. The trial court abused her discretion by entering the May 16, 2008 Order canceling the Lis Pendens filed against Winther's property.

6. The trial court abused her discretion by denying Dickinson's request to stay the May 16, 2008 Order canceling the Lis Pendens pending appeal.

#### ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

##### A. Summary Judgment (Assignment of Error No. 1):

1. Is WPI 301.10 – Washington's Pattern Jury Instruction on Economic Duress – the current and accepted view of Washington law on economic duress which follows the Restatement (Second) of Contracts and substitutes the concept of "no reasonable alternative" in place of the former and arcane emphasis on lack of free will or volition?

2. Can the trial court decide, as a matter of law, whether Dickinson had a "reasonable alternative" to signing the purported

‘releases’ under the circumstances or is this a factual question that must be left to the trier of fact?

3. Can the trial court properly dismiss Dickinson’s claims with prejudice without first considering whether Dickinson’s other contractual defenses bar enforceability of the “releases”, namely, coercion, overreaching, undue influence and/or other similar misconduct – issues that neither the trial court nor Winther addressed or considered?

4. Did the trial court improperly ignore or decide multiple material factual issues of fact in dismissing Dickinson’s claims on summary judgment?

B. Denial of Motions to Supplement and Enlarge (Assignment of Error No. 3): Did the trial court abuse its discretion in denying Dickinson’s motions to supplement the record and/or enlarge time when such motions were occasioned solely by counsel’s documented illness at the time Dickinson filed his original opposition to Winther’s motion for summary judgment, no hearing date for the summary judgment motion was scheduled, no decision had been made and no prejudice whatsoever would result?

C. Denial of Motion for Reconsideration. (Assignment of Error No. 4): Did the trial court abuse her discretion in denying Dickinson's motion for reconsideration?

D. Cancellation of Lis Pendens Pending Appeal. (Assignments of Error 5 and 6). Did the trial court abuse her discretion in canceling the Lis Pendens against Winther's property when, without a Lis Pendens in place, Winther could sell or refinance her property pending appeal and leave Dickinson without remedy if the case is ultimately reinstated and the summary judgment dismissal vacated?

### **III.**

#### **STATEMENT OF THE CASE**

##### **STATEMENT OF FACTS**

1. In July 2004, Dickinson and Winther begin dating. (CP 186, Dickinson Declaration pg. 2 at ¶ 6).

2. According to Winther, in or about May 2005, Dickinson proposes that the two of them jointly apply to refinance his Battle Ground home because Dickinson cannot qualify for an approximate \$150,000 loan by himself. (CP 107, Winther Declaration

pg. 2 at ¶ 5, lines 1-11). Dickinson denies this claim. (CP 186, Dickinson Declaration pp. 2-3 at ¶ 8).

3. According to Dickinson, in or about April 2005, Winther approached him with the following financial proposal: If he would borrow sufficient additional money from his available home equity to pay off the first mortgage on Winther's home (an amount owing of about \$120,000), plus some of her credit card debts totaling \$3,000 or so, Winther promised Dickinson that she would pay half of his new monthly mortgage payment for the life of the new loan and secure the loan through a deed of trust against her own home or, alternatively, quit claim a half-interest in her home to him. (CP 186, Dickinson Declaration at ¶¶ 8 - 9). Dickinson accepted Winther's proposal. (CP 186, Dickinson Declaration at ¶ 12).

4. Winther suggests that Dickinson apply for a loan of \$350,000 or more. (CP 186, Dickinson Declaration at ¶¶ 13-14). Dickinson applies for the loan but is informed that he cannot qualify for that amount on his income. (CP 186, Dickinson Declaration at ¶ 15). To overcome this obstacle, it was suggested that Dickinson put Winther jointly on title to his home so that both of their incomes could be used in the loan application process and they would then

qualify for the \$355,000 loan. (CP 186, Dickinson Declaration at ¶ 16). Winther urges Dickinson to proceed and put her on title to his home. (CP 186, Dickinson Declaration at ¶ 17).

5. Winther disputes this claim and states that Dickinson approached her and asked her to jointly apply for a loan with him and, to do so, she would have to be put on the title to his home. (CP 107, Winther Declaration at ¶ 5, lines 8-9).

6. On June 22, 2005, as part of the loan refinancing process, Dickinson executes the needed quitclaim deed putting Winther jointly on “title” to his home. (CP 48, Memo. in Support of Defendant’s Motion for Summary Judgment, Ex. “B” attached thereto; CP 107 at ¶ 5, lines 11-13; CP 186 at ¶ 18 and Ex. “D” attached thereto).

7. On June 22, 2005, Winther and Dickinson also open a joint checking account at iQ Credit Union so that the monthly US Bank loan mortgage payments can be electronically paid. (CP 186, Dickinson Declaration at ¶ 19).

8. On June 27, 2005, the new \$355,000 loan is funded and closed. (CP 107, Winther Declaration at ¶¶ 5-6; CP 186 Dickinson Declaration at ¶ 20 and Ex. “E” attached thereto).

9 At closing, Winther's first mortgage against her own home (\$120,602.64) is completely paid off from the loan proceeds, as well as approximately \$3,000 of her credit card debts. Moreover, the net proceeds of the loan totaling \$68,370.83 are disbursed to Winther and transferred into her separate account (CP 186, Dickinson Declaration at ¶ 20 and Ex. "E" closing documents attached thereto; CP 255, Skordahl Declaration and Chicago Title closing documents attached thereto including, but not limited to, Final Borrower Settlement Statement dated June 27, 2005 and Chicago Title Outgoing Wire Transfer dated June 27, 2005).

10. On June 28, 2005, the Quitclaim Deed from Dickinson to Winther is recorded with the Clark County Auditor's office. (CP 48, Memo. in Support of Defendant's Motion for Summary Judgment, Ex. "B" attached thereto; CP 186, Dickinson Declaration at ¶¶ 18 and 20 and Ex. "D" attached thereto).

11. In or August 2005, Winther moves into the Dickinson's home with her children. (CP Winther Declaration at ¶ 7, lines 22-23; CP 186, Dickinson Declaration at ¶ 23).

12. In December 2005, Winther and Dickinson become engaged to be married. (CP 186, Dickinson Declaration at ¶ 25; CP 107, Winther Declaration at ¶ 2 admitting that the parties became engaged, but omitting the month it occurred).

13. In January 2006, Winther and her children move out of the Dickinson home and the engagement is called off. (CP 107, Winther Declaration at ¶ 11; CP 186, Dickinson Declaration at ¶ 26).

14. Despite the termination of their engagement, Dickinson and Winther continue to see one another throughout 2006 and into 2007 and each continues to pay their respective share of the \$2,452.01 monthly mortgage payment until March 2007. (CP 186, Dickinson Declaration at ¶ 27).

15. At this time, unbeknownst to Dickinson, Winther unilaterally stopped paying her share of the mortgage payment, closes the parties' joint iQ Credit Union account from which the mortgage payment is being electronically paid and transfers all remaining funds to herself. (CP 186, Dickinson Declaration at ¶¶ 27-28 and Ex. "F" and "G attached thereto; CP 150, Morrell Declaration and documents attached thereto).

16. In late March 2007, Dickinson receives a letter dated March 14, 2007 from US Bank informing him that the March 2007 mortgage payment was returned for insufficient funds. (CP 186, Dickinson Declaration at ¶ 28 and Ex. “F” attached thereto).

17. Dickinson immediately contacted Winther regarding the March 14, 2007 insufficient funds letter from US Bank. Winther tells Dickinson that she closed the iQ Credit Union account and that she will no longer pay any money towards the \$355,000 US Bank mortgage. (CP 186, Dickinson Declaration at ¶ 29 and Ex. “G” attached thereto).

18. Dickinson urges Winther to honor her financial obligation and tells her that she has placed him into an impossible financial situation — one in which he cannot afford the monthly mortgage payment without her promised contribution. (CP 186, Dickinson Declaration at ¶¶ 30-32).

19. Winther responds by telling Dickinson that her home is “paid for” and she doesn’t care if Dickinson is forced into bankruptcy or if he loses his home to foreclosure. (CP 186, Dickinson Declaration at ¶ 31).

20. Beginning in April 2007, Winther claims that Dickinson requested that she relinquish her “ownership interest” in Dickinson’s home. (CP 107, Winther Declaration at ¶ 12). Winther tells Dickinson that she will only do so if “all financial issues between us” are “resolved at the same time.” (CP 107, Winther Declaration at ¶ 12).

21. Winther tells Dickinson that she is entitled to one-half the value of any appreciation that the home has received. (CP 107, Winther Declaration at ¶ 12). Winther maintains that she is a “joint owner” of Dickinson’s home. (CP 107, Winther Declaration at ¶¶ 9 and 12).

22. On or about April 10, 2007, Dickinson receives another letter from US Bank advising him that the mortgage loan is delinquent and that he must pay \$5,133.08 to cure the default. (CP 186, Dickinson Declaration at ¶ 33).

23. Knowing that foreclosure proceedings would be imminent if Dickinson did not cure the default, Dickinson is forced to sell some personal property items to get enough money to cure the \$5,133.08 loan default, but he knows that he cannot continue doing so. (CP 186, Dickinson Declaration at ¶ 34).

24. In desperation, Dickinson contacts several mortgage brokers inquiring about refinancing his property once again. (CP 186, Dickinson Declaration at ¶ 35). Dickinson is told that he already has one late mortgage payment to US Bank and that he cannot have any more if he stands any chance of refinancing. (CP 186, Dickinson Declaration at ¶ 35). Dickinson is also told that he must get Winther off title before he can refinance his mortgage loan. (CP 186, Dickinson Declaration at ¶ 35).

25. Knowing that Dickinson cannot refinance or continue making the monthly mortgage payments without Winther's cooperation, Dickinson contacts Winther again and tries to negotiate a compromise whereby she would pay him \$100,000 and sign a quit claim deed removing herself from title to Dickinson's home. (CP 186, Dickinson Declaration at ¶¶ 35-36). Winther rejects Dickinson's offer. (CP 186, Dickinson Declaration at ¶ 36).

26. Shortly thereafter, on June 26, 2007, Dickinson contacts Winther again. (CP 186, Dickinson Declaration at ¶¶ 36-37). Winther tells Dickinson that she will only sign a quitclaim deed if Dickinson "releases" her of any and all financial obligations. (CP 186, Dickinson Declaration at ¶ 37).

27. Winther tells Dickinson that this is a “take-it-or-leave-it” offer and that if he fails to “release” her of all financial obligations, she will continue to do nothing – making it impossible for Dickinson to either refinance or have enough money to pay the monthly mortgage payments. (CP 186, Dickinson Declaration at ¶ 37).

28. Dickinson objects, but feels compelled to accede to her demands as he believes that he has no other reasonable alternative. (CP 186, Dickinson Declaration at ¶ 37). If he does nothing, he will lose his home to foreclosure and all remaining equity because he cannot afford the monthly payments on his income. (CP 186, Dickinson Declaration at ¶ 37).

29. Dickinson considers suing Winther in court, but knows that a lawsuit will take too much time before the matter is resolved and Dickinson does not have time to wait, nor would a lawsuit likely do much to motivate Winther to cooperate with him. (CP 186, Dickinson Declaration at ¶ 37).

30. Unaware of any other reasonable alternative, Dickinson feels compelled to give Winther the “release”. (CP 186, Dickinson Declaration at ¶¶ 37-38).

31. On June 27, 2007, the very next day, Dickinson meets Winther at her mother's home and gives Winther a "release" over objection. (CP 186, Dickinson Declaration at ¶ 38). Winther also had prepared a "release" and tells Dickinson that he must sign her "release" or she will not sign the needed quitclaim deed. (CP 186, Dickinson Declaration at ¶ 38). Copies of the two "releases" are attached as Exhibits "D" and "G" to CP 48, Memorandum in Support of Defendant's Motion for Summary Judgment).

32. After Winther has her signed "release", she executes the quitclaim deed and takes herself off title to Dickinson's property. (CP 186, Dickinson Declaration at ¶ 38-39).

33. Dickinson files Winther's quitclaim deed and successfully refinances his property – borrowing over \$450,000 which now increases his monthly mortgage payment to \$3,962.00. (CP 186, Dickinson Declaration at ¶ 39).

#### PROCEDURAL HISTORY

34. On July 23, 2007, Dickinson files suit against Winther for breach of contract and fraud, among other claims, and files a Notice of Lis Pendens against Winther's property. (CP 1 and CP 32, respectively).

35. On August 30, 2007, Winther files an Answer, Affirmative Defenses and Counterclaim. (CP 36).

36. On October 29, 2007, Winther moves for summary judgment dismissal of Dickinson's lawsuit on the basis of the two signed "releases", as well as on the "statute of frauds" as to any alleged oral promises Winther made to provide Dickinson with either a quitclaim deed or deed of trust as security for Winther's financial obligations that may be owed to Dickinson. (CP 38 , 40 and 41 – Motion, Memorandum and Affidavit of Kari N. Winther).

37. On November 2, 2007, Dickinson files an Amended Reply to Winther's Counterclaim asserting numerous affirmative defenses including, among others, that the "releases" are unenforceable for the reason that they were procured by duress, undue influence, coercion, etc. (CP 113).

38. On December 3, 2007, Dickinson takes Winther's deposition testimony for use in opposition to Winther's motion for summary judgment. (CP 64 at 3, lines 10-13, and pgs. 5-6 of the Declaration of Larry E. Hazen incorporated therein; CP 490 Notice of Filing Deposition). The transcript was ordered at a cost of \$999.13

and would be available Thursday, December 6, 2007 – the day before Dickinson’s opposition memorandum and any exhibits were to be filed. (CP 491, pg. 3, lines 10-13, 18-20 and 23, pg. 4, lines 1-4 and pgs. 5-6 Declaration of Larry E. Hazen).

39. On Wednesday, December 5, 2007, Dickinson’s counsel becomes extremely ill with serious cold and flu-like symptoms that impact and impair his ability to complete the memorandum in opposition to summary judgment and result in the inadvertent omission of Winther’s deposition transcript and testimony as an exhibit in opposition to summary judgment. (CP 64 at pg. 3, lines 14-23, pg. 4, lines 1-15, and pgs. 5-6; CP 698, Declaration of Larry E. Hazen, pgs. 1-3 and exhibits; CP 692, Declaration of Marie N. Tilden; and CP 695, Declaration of Sally Streight).

40. On December 7, 2007, as a court-imposed deadline, Dickinson files his memorandum in opposition to Winther’s summary judgment motion, along with the accompanying declarations of Dickinson, James Morrell (iQ Credit Union) and Dorine Skordahl (Chicago Title) with accompanying exhibits. (CP 150, 186, 255 and 475).

41. On December 14, 2007, following Dickinson's counsel's return to work from illness, and recognizing the omission of Winther's deposition transcript and exhibits from Dickinson's summary judgment opposition, Dickinson's counsel files a motion and declaration to supplement the record with Winther's deposition testimony and exhibits and attaches Winther's deposition transcript and accompanying exhibits to said motion. (CP 491, pgs. 1-6).

42. On December 19, 2007, Winther files Defendant's Opposition to Plaintiff's Motion to Supplement. (CP 685).

43. On February 29, 2008, Dickinson files a Motion for Order Enlarging Time or, alternatively, for an Order Allowing the Filing of a Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment, as well as a Supplemental Memorandum. (CP 705; CP 698, Declaration of Larry E. Hazen with exhibits; CP 695, Declaration of Sally Streight, CP 692, Declaration of Marie Tilden, CP 710, Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment).

44. On March 12, 2008, Winther files her opposition memorandum to Plaintiff's motions to enlarge and/or supplement. (CP 728).

45. On March 20, 2008, Dickinson's counsel receives oral notice from Judge Woolard's legal assistant that the court is canceling oral argument on all pending motions in this case. Dickinson's counsel thus files a Supplemental Declaration with the court. (CP 84).

46. On March 21, 2008, the trial court sends a letter to Dickinson's and Winther's counsel denying – without explanation or reason or opportunity for hearing – Dickinson's motion to enlarge time for the filing of a supplemental memorandum. (CP 774).

47. On April 18, 2008, the trial court sends a letter to Dickinson's and Winther's counsel granting Winther's motion for summary judgment. (CP 775). Again, the trial court gives no reason, explanation or basis for its decision, nor does the court allow counsel the opportunity to be heard. (CP 775).

48. On April 28, 2008, Dickinson files a motion for reconsideration and accompanying memorandum. (CP 776).

49. On May 14, 2008, Winther files her opposition memorandum to Dickinson's motion for reconsideration. (CP 808).

50. On May 2, 2008, the trial court enters orders denying Dickinson's motions to supplement and enlarge, as well as an order granting Winther's motion for summary judgment. (CP 801 and 802).

51. On May 9, 2008, Winther moves to cancel the Lis Pendens. (CP 804).

52. On May 14, 2008, Dickinson files a Memorandum in Opposition to Motion to Cancel Lis Pendens and Requests a Stay Pending Appeal, if Necessary. (CP 821).

53. On May 16, 2008, the Court enters an Order Canceling Lis Pendens (CP 832) and orally denies from the bench Dickinson's Amended Motion for Reconsideration.

54. On June 2, 2008, Dickinson files a Notice of Appeal. (CP 834).

#### IV.

### ARGUMENT

#### 1. Standard of Review

##### Summary Judgment:

The appellate court reviews summary judgment decisions de novo, engaging in the same inquiry as the trial court. *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). A trial court's factual

findings on summary judgment are entitled to no weight, and the appellate court reviews the record *de novo*. All facts must be viewed most favorably to the party resisting the motion. Even if the facts are undisputed, if reasonable minds could draw different conclusions, summary judgment is improper. *Sheriff's Association v. Chelan County*, 109 Wn.2d 282, 745 P.2d 1 (1987).

Motions to Supplement, Enlarge Time, and/or for Reconsideration:

The appellate court reviews the above motions under an abuse of discretion standard – meaning “whether discretion is exercised on untenable grounds or for untenable reasons, considering the purposes of the trial court’s discretion.” *Coggle v. Snow*, 56 Wn.App. 499, 507, 784 P.2d 554 (1990)(citation omitted). Implicit in this standard is the requirement that the trial court give reasons and grounds for its decisions.

Exercise of discretion “on untenable grounds” indicates that the first step in making a discretionary decision is to make a supportable factual determination. *Washington Appellate Practice Deskbook*, “Standard of Review”, Vol. II at 18-7 (2<sup>nd</sup> ed. and 1998 Supp.)(emphasis added). Exercise of discretion “for untenable

reasons” indicates that the second step is to identify the legal standard which governs the ruling at hand.

In this case, the trial court gave no reasons, grounds or basis for her decisions denying, without argument, Dickinson’s motions to supplement and enlarge due to documented illness of counsel, for reconsideration or to maintain the Lis Pendens in place pending appeal. If truth, justice and equity are the hallmark and goal of the law, then the trial court’s decisions denying Dickinson’s motion to supplement the record with Winther’s sworn deposition testimony, admissions and accompanying exhibits, denying Dickinson’s supplemental memorandum and motion for reconsideration are clear examples of abuse of discretion and should be reversed.

**2. WPI 301.10 is the Accepted Law in Washington for determining Economic Duress**

Washington, like the majority of other states, recognizes “economic duress” or “business compulsion” as a valid contractual defense. WPI 301.10; *Puget Sound Power v. Shulman*, 84 Wn.2d 433 (1974); *Barker v. Walter Hogan Enterprises*, 23 Wn. App. 450 (1979); *Harstad v. Frol*, 41 Wn. App. 294 (1985). It is an **evolving**

**concept** that has changed over time as reflected by Washington's current Pattern Jury Instruction 301.10 -- Duress.

WPI 301.10 states:

A party may rescind a contract on the ground of duress if the party proves by clear, cogent and convincing evidence that he agreed to the contract because of an improper threat by the other party that left no reasonable alternative.

A threat is improper if (*select an appropriate phrase from the Comment below*)

Id. (emphasis added).

The comments and instructions to WPI 301.10 state that a threat is improper if:

- (a) what is threatened is a crime or tort, or the threat itself would be a crime or tort if it resulted in obtaining property,
- (b) what is threatened is criminal prosecution;
- (c) what is threatened is the use of civil process and the threat is made in bad faith; or
- (d) **the threat is a breach of the duty of good faith and fair dealing under a contract with the recipient.**

Id. (emphasis added).

The "economic duress" or "business compulsion" doctrine has been characterized as "a modern, equitable one" and is "constantly

being expanded by the courts.” 17A C.J.S. Contracts § 184 (2007).

See also WPI 301.10 and comments thereto.

The principle has been stated this way:

A contract may be invalid or unenforceable by reason of economic duress or business compulsion where undue or unjust advantage has been taken of a person’s economic necessity or distress to coerce him or her into making the agreement. So, where a person is called on either to comply with demands or suffer a serious business loss, this has been regarded by some courts as a species of duress invalidating contracts induced thereby . . . .

Id. C.J.S. Contracts § 184 (emphasis added). Washington is in accord.

According to Dickinson, Winther approached him with a financial proposal and Dickinson accepted. A contract was thus formed. Dickinson would pay off Winther’s existing mortgage and credit card debts totaling over \$123,000 out of the equity in his home, while Winther promised, among other things, to pay half of the subject monthly mortgage payments for the life of the loan. Winther honored this promise for 18 or 19 months until she unilaterally and wrongfully closed the parties’ joint checking account, took all of the remaining funds in the account and then refused to pay anything

further towards Dickinson's mortgage obligations – thus reaping a huge financial windfall at Dickinson's expense. (CP 186 at ¶¶ 8–31).

Winther then gave Dickinson a “take-it-or-leave-it” offer – sign a “release” releasing Winther of any further financial obligations or Winther would continue to do nothing – making it impossible for Dickinson to either pay the \$2,452.01 monthly mortgage payments or to refinance the loan. (CP 186 at ¶ 37).

Washington law holds that there is an implied “duty of good faith and fair dealing” in every contract. *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569 (1991). This duty obligates the parties to “cooperate with each other so that each may obtain the full benefit of performance.” *Id.* Winther breached this duty of “good faith and fair dealing” through her decision to stop paying her portion of the monthly mortgage payments owed to U.S. Bank, as well as her decision to unilaterally close the iQ account and transfer all existing monies to herself, among other things. She further compounded her misconduct through extortionate demands – threatening Dickinson with financial disaster if he did not accede to her demands.

Furthermore, under WPI 301.10, a threat is also improper if the resulting exchange is not on fair terms and:

(a) the threatened act would harm the recipient and would not significantly benefit the party making the threat,

**(b) the effectiveness of the threat in inducing the manifestation of assent is significantly increased by prior unfair dealing by the party making the threat,**  
or

(c) what is threatened is otherwise a use of power for illegitimate ends.

Id. (emphasis added). By the time Winther gave Dickinson the “take-it-or-leave-it” demand to release her or suffer the consequences, Winther had already stopped paying her portion of the mortgage payment, had closed the parties’ joint bank account and transferred all remaining money to herself. Dickinson did not need any more “proof” of examples of Winther’s “prior unfair dealing”.

The above list broadens the formulation of the first Restatement, in which the primary focus was on whether a wrongful act compelled assent “without volition” or without the victim “exercising free will and judgment.” WPI 301.10, comment. The Restatement (Second) “has substituted the concept of ‘no reasonable alternative’ for the former emphasis on lack of free will or volition.”

Id. Washington has implicitly, if not explicitly, adopted this

approach through WPI 301.10 – an approved jury instruction prepared by the Washington Supreme Court Committee on Jury Instructions.

### **Prior Washington Cases on Economic Duress**

Prior to the adoption of WPI 301.10, Washington cases followed the first Restatement of Contracts § 492 which required a plaintiff to prove that the defendant engaged in wrongful and oppressive conduct that created the underlying financial vulnerability and that resort to the courts would be impractical under the circumstances. The only case resolved on summary judgment and upheld on appeal was that of *Barker v. Walter Hogan Enterprises*, 23 Wn. App. 450 (1979) discussed hereafter. All other cases went to trial.

Even if the cases following the First Restatement of Contracts were followed, summary judgment would still be improper because it would be a factual issue as to whether resort to the courts would have been impractical under the circumstances. That question must be determined by the jury – not by the trial court.

In the following Washington cases, the court held that the defense of “business compulsion” or “economic duress” was inapplicable because, in each case, the defendant had done nothing

wrong nor had the defendant created or caused the situation leading to plaintiff's financial vulnerability.

In *Rosellini v. Banchemo*, 8 Wn.App. 383, 387 (1973) rev'd on another ground, 83 Wn.2d 268 (1974), the case involved a dispute over a construction contract to build a state liquor store. The parties had entered into a "cost plus" basis with a maximum price ceiling of \$56,146, plus tax and the cost of any extra work. A dispute arose over the progress of the work, the percent of the job left to be completed and the amount of money already paid to Rossellini, the contractor. The parties' then entered into a contract modification, reducing the payment ceiling to \$52,000 plus sales tax.

Rosellini later sued over the modification claiming that it was the result of economic duress since the contractor needed money to pay its subcontractors. The trial court ruled that the modification was unenforceable due to duress and lack of consideration, but the court of appeals disagreed, holding:

In order to substantiate the allegation of economic duress or business compulsion, the plaintiff must go beyond the mere showing of a reluctance of accept and of financial embarrassment. There must be a showing of acts on the part of the defendant which produced these two factors. The assertion of duress must be proven by evidence that the duress resulted from

defendant's wrongful and oppressive conduct and not by plaintiff's necessities.

Id. (emphasis added).

Similarly, in *Puget Sound Power v. Shulman*, 84 Wn.2d 433 (1974), two real estate developers approached Shulman about obtaining a \$250,000 loan to complete construction of seven apartment projects. Shulman declined to loan the money directly, but agreed to purchase the developers' interest in one of the apartment buildings for \$110,000 and to guarantee an additional loan of \$150,000. Shulman would take title to the apartment building immediately, but would not be obligated to pay the \$110,000 purchase price until 10 new units were completed.

The agreement provided that if the developers/sellers failed to construct and complete the additional units, Shulman would be entitled to retain any rents he had collected in the interim and also to recover liquidated damages. Six months after entering into this agreement, the parties negotiated a supplemental agreement. The agreement served to settle a dispute that had arisen between them and lowered the purchase price from \$110,000 to \$90,000.

The developers claimed that the parties' supplement agreement was the result of economic duress. The trial court and court of appeals rejected this claim, stating:

It is urged that the supplemental agreement was the result of duress or "business compulsion". The sellers stress the fact that they were in desperate financial condition when this agreement was made. There was no showing that their financial condition was in any way attributable to any act of Shulman. It was because of their financial difficulties that they sought him out and solicited his aid. In dealing with them, he was, of course, entitled to protect his interests, as long as he did not engage in fraud or overreaching.

Id. at 442-43 (emphasis added). Again, the defendant did nothing wrong and was not the cause of the developers' financial crisis.

Similarly, in *Barker v. Walter Hogan Enterprises*, 23 Wn. App. 450 (1979), the only case affirmed on summary judgment, the court rejected plaintiff's claim of "economic duress" or "business compulsion" because the defendant did not "cause or contribute" to plaintiff's economic woes. The case stemmed from a 10-year commercial lease of a portion of a shopping center. No provision had been made for renewal or extension of the lease at the end of the initial term.

Some 9 and ½ years into the 10-year lease term, the tenant entered into negotiations with a third party to buy his tavern business. The prospective buyer, however, refused to purchase the business unless he could be assured of having a new lease for “several years”.

Under the existing lease, the tenant was contractually obligated to pay 50% of the costs associated with the installation of an additional septic system as required by the county. During the term of the lease, the county required the installation of two septic systems, but the tenant only paid for the first one. The landlord refused to negotiate a new lease until the tenant paid his share of the costs of the second septic system.

The tenant paid the additional septic fee and then sued – claiming that he had been “compelled to pay” the fee and, if he had not done so, he would have been “prevented from selling” his business. In rejecting the tenant’s claim, the court stated:

In the case at bench, the underlying circumstances which caused Barker’s vulnerability were caused by the normal and expected termination of his 10-year lease without any contractual basis for renewal on any terms, coupled with his unilateral attempts to sell his business and the conditions imposed by his buyer. **In no way did Hogan cause or contribute to those underlying circumstances.**

Id. (emphasis added). Again, the lack of improper conduct by the defendant was the key.

Finally, in *Nord v. Eastside Association*, 34 Wn.App. 796 (1983), the court was faced with another contract dispute in which the opposing party had done nothing wrong. The court reiterated that, for the defense of economic duress to apply:

[Plaintiff] must have caused or contributed to Eastside's vulnerability and must have exerted the pressure that brought about the decision to enter into the agreement. The acts or threats of the plaintiff cannot amount to duress if he had a legal right to do the threatened act.

Id. at 798-99 (emphasis added).

**3. The Trial Court Cannot Determine, as a matter of law, whether Dickinson had a "Reasonable Alternative" to signing the Releases because "reasonableness" is a Factual Question.**

Intent and states of mind are factual questions. See e.g., *Pearson v. Gray*, 90 Wn.App. 911 (1998)(parties' intent with regard to quitclaim deed was a question of fact). Similarly, questions of *reasonableness* or whether *a reasonable alternative existed* is typically a question of fact. See e.g., *Robinson v. Employment Sec. Dept.*, 84 Wn.App. 774, 780 (1996)(whether claimant exhausted all "reasonable alternatives" is a question of fact); *Home v. North Kitsap Sch. Dist.*, 92 Wn.App. 709,

723 (1998)(whether plaintiff had a “reasonable alternative” is question of fact); *Jorgensen v. Massart*, 61 Wn.2d. 491, 495 (1963)(whether plaintiff had a “reasonable alternative” to mopping floor or waiting for defendants to do it was question of fact). Reasonableness is a factual determination and must be left to the jury and cannot be decided as a matter of law.

**4. Winther Limited her Motion for Summary Judgment to Only the Issue of Economic Duress**

Winther’s motion for summary judgment was limited to the defense of economic duress and ignored all other contractual defenses including, but not limited to, undue influence, coercion, overreaching, etc. Because Winther limited her motion to only the issue of economic duress, Dickinson did so as well. Summary judgment was thus improper. The “releases” could still be held invalid and unenforceable on the basis of other contractual defenses. Dickinson argued this point at page 5 of his Memorandum in Opposition to Defendant’s Motion for Summary Judgment. (CP 475 at page 5, lines 1-12; CP 113, Amended Reply to Counterclaim at pg. 3, lines 1-2).

**5. Factual Issues Abound in this Case Precluding Summary Judgment**

Factual issues abound in this case precluding summary judgment. CR 56 expressly states that judgment is to be “rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

Whether Dickinson was left with “no reasonable alternative” when he signed the “releases” is a question of fact. So also is the existence and terms of the parties’ oral contract, their intent with respect to the quitclaim deed that put Winther on title to Dickinson’s home in the first instance (was she a “joint owner” or was she merely put on title to facilitate the refinancing of Dickinson’s home?).

Did Winther breach her agreement with Dickinson and the implied covenant of good faith and fair dealing by refusing to pay her share of the monthly mortgage payments and then using the financial crisis it created for Dickinson to extort a “release” from him? The court simply cannot determine the defense of business compulsion aka “economic duress” as a matter of law given the disputed material facts

in this case and/or under established Washington law including WPI 301.10 – Washington’s authorized Pattern Jury Instruction on economic Duress. The facts and law compel reversal of the court’s decision granting summary judgment.

**6. The Trial Court Abused its Discretion when it Refused to Allow Supplementation of the Record with Winther’s Sworn Deposition Testimony.**

The decision of the trial court to disallow Winther’s sworn deposition testimony as part of the record on summary judgment is indefensible and a clear abuse of discretion. Winther’s deposition was taken Monday, December 3, 2007 (4 days before Dickinson’s memorandum in opposition to Winther’s summary judgment motion would need to be filed); the transcript was ordered at the conclusion of the deposition at a cost of \$999.13; Winther’s counsel was present at the deposition; no hearing date was set for Winther’s motion and, in fact, a decision would not rendered until April 18, 2008; the omission of the transcript from the record was due to the effects of illness and was simply inadvertent; Dickinson moved to file the deposition immediately; and NO PREJUDICE could result.

Only one deposition was taken in this case – that of the defendant Winther. In the opening paragraph to Dickinson’s

memorandum in opposition to Winther's summary judgment motion, it was stated that the memorandum would be based on the "attached and accompanying declarations of Andrew P. Dickinson, James M. Morell (records custodian for iQ Credit Union and accompanying documents) and Dorine Skordahl (records custodian for Chicago Title and accompanying documents), as well as the pleadings, files **and deposition testimony herein.**" (CP 475 at 1)(emphasis added). It was clear that Winther's deposition was to be included in Dickinson's opposition memorandum as an exhibit.

#### **WASHINGTON LAW ALLOWS FOR SUPPLEMENTATION OF THE RECORD**

CR 56 and Washington law clearly allow for supplementation of the record in order to provide the court with a complete record prior to making a decision on summary judgment. See *Washington Carpets, Inc. v. G.W. Construction Group, Inc.*, 94 Wn.App. 899, 903 (1999)("counsel had several weeks between the oral grant of summary judgment and entry of the order on the motion to file affidavits or otherwise complete the record. Yet, despite their right to do so, they failed . . . ."); *Cofer v. Pierce County*, 8 Wn.App. 258, 261 (1973)("Until a formal order granting

or denying the motion for summary judgment is entered, a party may file affidavits to assist the court in determining the existence of an issue of material fact.”); *Felsman v. Kessler*, 2 Wn. App. 493, 498 (1970)(on summary judgment, a party is entitled to file “affidavits and other matters” even after the court has filed a memorandum opinion ruling on the motion in an effort to get the court to change its mind); WASHINGTON CIVIL PROCEDURE DESKBOOK, Vol. 3 at § 56.7(2)(a) at 56-45 (WSBA 2d. ed. 2002 and Supp. 2006).

Some of Winther’s key deposition testimony is set forth below:

Q. Did you have a discussion with [Dickinson] about joining him in a joint application for a refinance loan on his property?

A. That was after he approached me regarding paying off my home....

\* \* \* \* \*

Q. So when [Dickinson] approached you about off your home, what was your reaction to that?

A. I was very surprised.

Q. Kind of unusual that someone would volunteer to refi their home and in the process pay off yours?

A. Unusual would be a good word.

Q. ...What point in time did Mr. Dickinson propose this financial plan to pay off your home as part of the refinance process?

A. I don't have an exact date. It would be in that window of time between when his [divorce] decree was finalized and when the loan went through.

Q. And did you propose to Mr. Dickinson that you would quit claim any interest in your home to him or take a deed of trust on your property as security?

A. No.

Q. **Was this a loan he was making to you?**

A. **No.**

Q. **You considered it a gift?**

A. **No.**

Q. **What did you consider it to be?**

A. **A joint financial transaction.**

Q. **And what did you understand the terms of the transaction to be?**

A. **We were progressing as a couple.**

\* \* \* \* \*

Q. What were the terms of this joint financial relationship or situation?

A. We didn't make any terms.

\* \* \* \* \*

Q. **Well, did you agree to pay any portion of the new mortgage payment that would be taken out jointly by you and Mr. Dickinson?**

A. **Each party was responsible . . . and so Andy was to pay half, and I was to pay half. . .**

\* \* \* \* \*

Q. How long was the joint financial arrangement supposed to continue between you and Mr. Dickinson?

A. We never set.

Q. . . . Would it be for the life of the loan?

A. We never discussed that.

\* \* \* \* \*

Q. **Did you think you could quit paying your \$1200 or whatever your portion was at any time?**

A. **That thought never crossed my mind either.**

\* \* \* \* \*

Q. Now, when your first mortgage debt was paid off in this refinance loan, do you know how many years you had left on that mortgage to pay?

A. It was a 30-year loan . . . so I'm going to estimate **22 years**.

Q. And what was your monthly mortgage payment on that underlying loan at your house?

A. Roughly, **\$840 a month.**

Id., Winther Depo. taken December 3, 2007 at 16-23, 32-33 (emphasis added). (CP 491 with attached deposition transcript and exhibits).

Winther also testified:

Q. Did you ask Mr. Dickinson to prepare Exhibit 11 [Dickinson's handwritten release]?

A. I said that I don't trust his word, and that he would have to give me his promise in writing **before I would sign over the quit claim.**

\* \* \* \* \*

Q. Were you demanding that he sign something like this?

A. I didn't demand, no.

\* \* \* \* \*

Q. Did you ever tell Mr. Dickinson that you didn't care if he had to file bankruptcy?

A. Never.

Q. Did you ever threaten – or did you ever tell Mr. Dickinson, rather, that unless he provided you with a signed statement, such as Exhibit 12 [Winther's typewritten release], you would not

quit claim – sign a quit claim deed so he could refinance the property?

A. I never said that.

Q. ... Did you prepare Exhibit 12 [Winther's typed release]?

A. Yes.

Q. ...And when did you do this?

A. In the hours leading up to our meeting. Not even hours. I mean it was pretty quick.

Q. And did you type this yourself?

A. Yes, I did.

\* \* \* \* \*

Q. You never told Mr. Dickinson to sign this document that you prepared?

A. I laid it down on the table that was in front of us. I didn't say anything.

\* \* \* \* \*

Q. Would you have signed the quit claim deed without Mr. Dickinson signing this document?

MR WELCH: You can go ahead and answer. I've made my objection of record [i.e. speculation].

A. ...No. I would not have signed the – the quit claim.

Id., Winther Depo. taken December 3, 2007 at 108-112, 122-123 (CP 491 with attached deposition transcript and exhibits). The trial court should have allowed Winther's sworn testimony into evidence.

**7. The Trial Court Abused her Discretion in Denying Plaintiff's Amended Motion for Reconsideration.**

Dickinson moved for reconsideration on the following enumerated CR 59 grounds:

- (1) Irregularity in the proceedings of the court . . . , or any order of the court, or abuse of discretion, by which Dickinson was prevented from having a fair trial [or in this case a fair hearing on defendant's motion for summary judgment];
- (7) That there is no evidence or reasonable inference from the evidence to justify . . . the decision, or that it is contrary to law; and
- (9) That substantial justice has not been done.

The trial court denied the motion outright – giving no explanation, basis or reason or her decision or how the cited law was inapplicable and/or how and why no genuine issue of material fact remained. (CP 776, Plaintiff's Amended Motion for Reconsideration).

The trial court clearly ignored relevant Washington law with respect to economic duress, as well as relevant law with respect to the Statute of Frauds. The law of economic duress was set forth above. The law relative to the Statute of Frauds is set forth below.

Part performance is an exception to the statute of frauds' formal writing requirement for real property conveyances: "[A]n agreement to convey an estate in real property which is not in writing in compliance with the requisites of RCW 64.04.010 and .020 may be proved without a writing, and specifically enforced, if there is sufficient part performance of the agreement." *Berg v. Ting*, 125 Wn.2d 544, 556 (1995).

The part performance doctrine "is based on the premise that in certain situations it would be fraudulent to permit a party to escape performance of his [or her] duties under an oral contract after . . . [permitting] the other party to perform in reliance upon the agreement." *Berg v. Ting, supra*, 125 Wn.2d at 556 (1995)(citation omitted). To determine if there has been sufficient part performance, the court examines three factors: (1) delivery and assumption of actual and exclusive possession; (2) payment or tender of

consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.” *Id.*

The part performance rule is flexible, depending on the particular facts and circumstances of each case. *Id.* at 557-59. Our Supreme Court has explicitly rejected any rule that requires that at least two of the factors be present before part performance can be found. *Id.* at 558. It is the duty of courts of equity to “prevent the use of the Statute of Frauds as an instrument of fraud or as a shield for a dishonest and unscrupulous person.” *Miller v. McCamish*, 78 Wn.2d 821, 825-26 (1971).

In *Smith v. Mills*, 296 P.2d 481 (1956), a case almost identical to *Dickinson v. Winther*, the Oregon Supreme Court rejected defendant’s Statute of Frauds argument where the plaintiff had paid off defendant’s existing mortgage and other debt in reliance on defendant’s oral promise to give plaintiff a security interest in his property (i.e., mortgage) until the loan was repaid. Like the *Dickinson* facts, the *Smith v. Mills* parties were romantically involved and contemplating marriage before the relationship fell apart.

While the two were romantically involved, Mills approached Smith and proposed that Smith pay off Mills’ existing mortgage on

his home, pay off his existing car loan and purchase a new car for him. In return for doing so, Mills orally promised Smith that he would execute a note and mortgage in Smith's favor to secure repayment of the loan. Thereafter, Mills breached his oral agreement with Smith by refusing to execute either a note or mortgage.

Smith then sued Mills and Mills claimed, in part, that the Statute of Frauds barred Smith's claims. The trial court rejected this defense and the Oregon Supreme Court affirmed, stating:

The serious question that is posed . . . is whether or not, because the agreement to execute the mortgage is entirely oral, equity will specifically enforce the agreement.

ORS 41.580 provides:

In the following cases the agreement is void unless it . . . is in writing and subscribed by the party to be charged, or by his lawfully authorized agent; evidence, therefore, of the agreement shall not be received other than the writing, . . .

(5) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of any interest therein.

For the purposes of this opinion, we consider a mortgage upon real property as creating an "interest therein . . . .

It is now well established . . . that to prevent the perpetration of a fraud the Statute of Frauds will not preclude a court of equity from enforcing an oral agreement of the parties lying within its prohibition.

The basis of equitable interference is that **“Equity will not permit a party to retain an advantage thus gained upon the faith of a verbal agreement, while he repudiates its obligations under cover of a statute. In a word, it will not allow the statute to be used as a cover for fraud and bad faith.”** (Citation). “The statute of frauds was never designed to shield against the perpetration of a fraud.”

\* \* \*

To permit the defendant to prevail in this cause of action in reliance upon the Statute of Frauds, would be to tie the arms of equity and cause equity to lend its aid to the perpetration of an unconscionable fraud. The decree of the trial court is affirmed.

*Id. Smith v. Mills*, 296 P.2d at 485-87 (emphasis added). The same arguments apply to Winther’s misconduct towards Dickinson. Winther cannot be allowed to “hide” behind the Statute of Frauds when she is using it to commit fraud.

**8. The Trial Court Abused her Discretion in Canceling the Lis Pendens Pending Appeal**

RCW 4.28.320 expressly allows the Court to continue the Lis Pendens in place pending appeal. The pertinent statutory language reads as follows:

And the court in which the said action was commenced may, **at its discretion**, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, **in whole or in part**, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

Id. (emphasis added). Release or cancellation of the Lis Pendens is neither mandatory nor required. The court clearly has the right to deny the “application” to cancel a Lis Pendens and thereby continue it in place – or to only cancel it in part – pending appeal. The Lis Pendens should be continued in place to protect Dickinson pending appeal.

The purpose of filing a lis pendens is to “give notice of pending litigation affecting the title to real property, and to give notice that anyone who subsequently deals with the affected property will be bound by the outcome of the action to the same extent as he or she were a party to the action.” *United Sav. & Loan Bank v. Pallis*, 107 Wn.App. 398, 405 (2001). During the appeals period, title to Winther’s property will still be in dispute. The Lis Pendens is simply a procedural device to give notice of pending litigation. Dickinson will be without remedy if

the Lis Pendens remains cancelled and he prevails on appeal. No harm will occur to Winther if the Lis Pendens is reinstated.

V.

### CONCLUSION

A great injustice will occur if this matter is not remanded for trial. Winther – through deceit and wrongdoing – got her home paid for out of Dickinson’s home equity funds. Winther thus escaped 22 years of mortgage payments at \$840 a month at Dickinson’s expense. Dickinson now stands to lose his home of 18 years solely as a result of Winther’s misconduct. Winther then used the financial crisis she created for Dickinson to extort a “release” from him. Winther’s conduct is so deplorable that it cannot be tolerated in a civilized society.

For all the foregoing reasons, the court’s order granting summary judgment must be reversed and vacated as genuine factual issues exist. The declarations of Andrew P. Dickinson, plus the declarations of records custodians James M. Morell and Dorine Skordahl of iQ Credit Union and Chicago Title Insurance Company

and attached documents thereto clearly create triable issues of fact surrounding Winther's misconduct.

Request for Attorney Fees and Expenses

Finally, pursuant to RAP 14.1 –14.6, and RAP 18.1, Dickinson requests an award of statutory attorney's fees and allowable expenses and costs as set forth in RAP 14.3.

DATED this 2<sup>ND</sup> day of September, 2008.

  
Larry E. Hazen, WSBA #31046  
Attorney for Appellant Dickinson

**CERTIFICATE OF SERVICE**

I, Larry E. Hazen, certify under penalty of perjury under the laws of the State of Washington that I served the foregoing document by the method, on the date, and on each attorney(s) and/or person(s) identified below.

Method of Service:

  X   By **hand delivery** as indicated.

Person or Persons Served:

Curtis A. Welch  
Duggan Schlotfeldt & Welch, PLLC  
900 Washington Street, Suite 1020  
Vancouver, WA 98666

Attorney for Respondent

Clerk of the Court  
Court of Appeals, Division II  
950 Broadway, Suite 300, MS TB-06  
Tacoma, WA 98402-4454

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DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

DATED this 2ND day of September, 2008.

  
\_\_\_\_\_  
Larry E. Hazen, WSBA #31046  
Attorney for Appellant

# **APPENDIX**

**A-1**

**COPY  
ORIGINAL FILED**

**DEC 07 2007**

**Sherry W. Parker, Clerk, Clark Co.**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

ANDREW P. DICKINSON,

Plaintiff,

vs.

KARI N. WINTHER,

Defendant.

) Case No.: 07 2 03999 0

)  
) DECLARATION OF  
) ANDREW P. DICKINSON  
) IN OPPOSITION TO DEFENDANT'S  
) MOTION FOR SUMMARY JUDGMENT

I, Andrew P. Dickinson, declare:

1. I am the plaintiff in the above-entitled case, am over 18 years of age, am competent to testify and make this declaration based upon my own personal knowledge.

2. In or about November 1990, some 15 years before I had ever met the defendant, my then wife, Darlene, and I purchased the real property located at 14012 NE 333<sup>rd</sup> Street in Battle Ground, Washington. We built a home on the land and I have resided there at all times since then (hereinafter the "Dickinson Home").

3. In June 2003, Darlene and I separated and we were eventually divorced on or about April 29, 2005.

DECLARATION OF ANDREW P. DICKINSON IN  
OPPOSITION TO DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT - 1

**Larry E. Hazen, P.S.**  
1014 Franklin Street  
Vancouver, WA 98660  
(360) 213-0069 office / (360) 694-7206 fax

1 4. As part of the divorce decree, I was awarded the Dickinson Home, but was to  
2 pay my ex-wife \$50,000 by September 1, 2005. A true and correct copy of the Decree of  
3 Dissolution is attached hereto as **Exhibit "A"**.

4 5. In order to pay the \$50,000 to my ex-wife by September 2005 as ordered, I  
5 planned to refinance the Dickinson Home and property and borrow approximately  
6 \$175,000. This amount would be sufficient to pay off the \$96,980 balance owed to US  
7 Bank on the existing mortgage against the property, the \$50,000 debt owed to my wife, plus  
8 some other incidental debts and estimated closing costs. A true and copy of the June 21,  
9 2005 letter from US Bank regarding the then payoff amount is attached hereto as **Exhibit**  
10 **"B"**.

11 6. In July 2004, or thereabout, I first met and thereafter began dating the  
12 defendant, Kari Winther. Ms. Winther had gone through a divorce a year or so earlier. As  
13 part of her divorce, she had been awarded the home located at 1911 Landover Drive in  
14 Vancouver, Washington (hereinafter the "Winther Home"). A true and correct copy of Ms.  
15 Winther's Decree of Dissolution and the recorded quit claim deed from her ex-husband are  
16 attached hereto as **Exhibit "C"**.

17 7. By the time my own divorce was finalized in April 2005, Ms. Winther and I  
18 had developed a close personal and romantic relationship.

19 8. I had previously told Ms. Winther that I was planning on refinancing the  
20 Dickinson Home to pay off my ex-wife. It was about this time that Ms. Winther  
21 approached me with the following financial proposal: If I would borrow sufficient  
22 additional money from my available home equity to pay off the first mortgage on the  
23  
24  
25  
26

1 Winther Home (an amount owing of about \$120,000), plus some of her credit card debts  
2 totaling \$3,000 or so, she promised me that she would pay half of my new monthly  
3 mortgage payment for the life of the loan.

4  
5 9. In addition, as security for paying off \$123,000 of her debt, Ms. Winther  
6 promised and represented that she would quit claim a one-half interest in the Winther Home  
7 to me or otherwise execute a deed of trust against her property to secure her repayment  
8 obligations – just as she would have to do with any other lender.

9  
10 10. Ms. Winther further suggested that she would move herself and two children  
11 into the Dickinson Home with me and rent out the Winther Home for \$1,200 a month. The  
12 rental proceeds would be paid towards the new monthly mortgage payment. The remaining  
13 balance of each mortgage payment would be split equally between Winther and me.

14  
15 11. Winther explained that by doing so, my monthly mortgage payment would  
16 not increase over what I had been paying (which was roughly \$600 per month) and it would  
17 reduce her out-of-pocket expenditures for monthly mortgage payments for her from \$840  
18 per month (which she was currently paying) to roughly \$600 as well – saving her \$240 each  
19 month from what she had been paying.

20  
21 12. Because of our relationship, and because I trusted her and relied upon her  
22 promises, I agreed to apply for a larger loan so her home and credit card debts would be  
23 paid off.

24  
25 13. Ms. Winther suggested that, since I was refinancing anyway, I should seek a  
26 loan amount of approximately \$350,000 or more so that there would be roughly \$50,000-  
\$75,000 or so in net proceeds after paying off the various debts to modernize and refurbish

1 my home – things such as re-doing the kitchen, buying new carpet and appliances, etc. Her  
2 suggestion made sense to me

3 14. Consequently, I agreed to apply for a much larger loan than I had originally  
4 planned – increasing the loan amount from \$175,000 to \$355,000.

5  
6 15. During the loan application process, however, I was informed that I would not  
7 qualify for that amount on my current income.

8 16. To qualify for the larger loan amount, it was suggested that I put Winther on  
9 title with me to the Dickinson Home. This would allow her income to be used in addition to  
10 my own income so that we could qualify for the larger loan amount.

11  
12 17. After discussing this with Winther, she urged me to proceed – reminding me  
13 that she would be putting me on title to her house as well.

14 18. Consequently, on or about June 20, 2005, relying upon Winther's repeated  
15 promises and assurances, I executed a quitclaim deed conveying the Dickinson Home from  
16 myself to Winther and me. A true and correct copy of said deed is attached hereto as  
17 **Exhibit "D"** and is incorporated herein by this reference.

18  
19 19. On or about June 22, 2005, Winther and I open a joint checking account at iQ  
20 Credit Union (Acct. No. 131626) whereby the new monthly mortgage payment can be  
21 electronically paid to US Bank each month.

22 20 On or about June 27, 2005, the new loan for \$355,000 is closed. A true and  
23 correct copy of the final settlement statement, escrow instructions and Deed of Trust in  
24 Winther's and my name are attached hereto as **Exhibit "E"** and incorporated herein by this  
25 reference.  
26

1           21.    On June 28, 2005, the quitclaim deed from me to Ms. Winther and myself is  
2 recorded in the Clark County property records.

3           22.    Ms. Winther, however, does not prepare and/or execute a quitclaim deed to  
4 me on her property as she previously promised, but assures me that she will do so.

5           23.    In or about August 2005, Winther and her children move into the Dickinson  
6 Home.

7           24.    In August or September 2005, or thereabout, after we had jointly prepared the  
8 Winther Home for rental, the home is rented out to tenants for \$1,200 per month.

9           25.    In December 2005, near Christmas, I propose marriage to Winther. She  
10 accepts and we become engaged.

11           26.    In January 2006, however, Winther moves out of the Dickinson Home and  
12 the engagement is called off.

13           27.    Nevertheless, throughout 2006 and into 2007, Winther and I continue to see  
14 one another and she continues to pay her portion of the monthly mortgage payment on the  
15 Dickinson Home as she had agreed – until March 2007 when she abruptly and unilaterally  
16 closes the accounts and transfers all remaining monies to herself. True and correct copies of  
17 the monthly statements from our joint checking and savings accounts at iQ Credit Union  
18 from June 2005 (the month the accounts were opened) through March 2007 (the month the  
19 accounts were closed) are attached to the accompanying Declaration of James M. Morell,  
20 one of the designated records custodians of iQ Credit Union.

21           28.    I did not know that Winther had stopped paying her portion of the monthly  
22 mortgage payment until I received a letter from US Bank informing me that a recent  
23  
24  
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26

1 mortgage payment was returned for insufficient funds. A true and correct copy of the  
2 March 14, 2007 letter from US Bank is attached hereto as **Exhibit "F"**.

3 29. Immediately after receiving the US Bank letter, I called Winther to find out  
4 what had happened. She informed me that, not only had she closed both iQ Credit Union  
5 accounts, but that she would not pay a single cent further towards the remaining \$355,000  
6 mortgage loan balance. A true and correct copy of iQ Credit Union's Closed Account  
7 Form signed by Winther is attached hereto as **Exhibit "G"**.

9 30. In desperation, I asked Winther to honor her financial obligation and told her  
10 that she had placed me into an impossible financial situation. I also told her that I would not  
11 have applied for such a large loan nor been approved for such had it not been for her  
12 promises and representations.

14 31. I also reminded her that we had paid only 18 or 19 monthly payments on a  
15 30-year \$355,000 loan and that I could not pay the monthly mortgage payment on my  
16 income. She replied that her "home was paid for" and that she did not care if I was ruined  
17 financially, forced into bankruptcy or whether I lost my home to foreclosure. She would  
18 not pay anything further towards her the US Bank loan obligation – whether to me or to US  
19 Bank. She again smugly remarked that her "home was paid for" and then abruptly ended  
20 our telephone conversation.

22 32. Without Winther's promised contribution of \$1,200 each month towards the  
23 mortgage payment, I did not have sufficient income to make the mortgage payments on top  
24 of my other monthly expenses.

1 33. On April 10, 2007, I received another letter from US Bank advising me that  
2 the mortgage loan was delinquent and that a payment of \$5,133.08 would be needed to  
3 bring the loan current. A true and correct copy of this letter is attached hereto as **Exhibit**  
4 **"H"**.

5  
6 34. Knowing that foreclosure proceedings would be imminent if I did not cure the  
7 default, I sold some of my personal property in an effort to bring the loan current. I knew,  
8 however, that I could not continue to do so.

9 35. I contacted several different mortgage brokers in a desperate attempt to  
10 refinance my home again, if possible, solely in an effort to buy time to avoid foreclosure. I  
11 was told that I had one late mortgage payment and that I could not have any more if I stood  
12 any chance of refinancing. I also had to get Winther off title to my home or get her to pay  
13 me back. Without her cooperation, I would be unable to refinance the US Bank loan and  
14 could not pay the monthly mortgage payments.

15  
16 36. I called Winther again to seek her cooperation. I told her that I would reduce  
17 the amount of money that I believed she owed me. She asked me how much money I  
18 thought would be fair. I told her to pay me \$100,000 and quit claim my home back to me.  
19 The \$100,000 figure was extremely generous since I had paid off \$123,000 of her debts  
20 only two years previously and she had made only 18 or 19 monthly payments towards the  
21 US Bank loan in the interim. She refused and hung up.

22  
23 37. We spoke again shortly thereafter and she told me that she would only  
24 execute a quit claim deed if I first released her of all claims and financial obligations. She  
25 said it was a take-it-or-leave-it offer. She threatened that she held all the cards and that she  
26

1 would continue to do nothing unless I agreed to her demands. I objected, but knew that I  
2 had no other reasonable alternative if I wanted to save my home and remaining equity. I  
3 was in her control and she knew it. Resort to the courts would take too long at this juncture  
4 as I had to refinance immediately and that could only be accomplished by getting Winther  
5 to execute a quit claim deed removing her from the title. A lawsuit would unreasonably  
6 prolong the situation. By the time the matter was resolved in the court system, I would have  
7 lost my home because I would have been unable to refinance without Winther's  
8 cooperation. Suing her would not foster a speedy resolution nor motivate her to cooperate.

9  
10 38. She met at her mother's home the next day on June 27, 2007. I prepared a  
11 handwritten release and gave it to her over objection. She said that I had to sign her release before  
12 she would sign the quit claim deed. I did as she directed. She then signed the quit claim deed and  
13 handed it to me.

14  
15 39. The deed was subsequently filed and I successfully refinanced my home -  
16 borrowing over \$450,000 so that I would have sufficient money to pay my new \$3,962.00 monthly  
17 mortgage while I sought legal redress for Winther's wrongdoing. If I had not cooperated with  
18 Winther when I did and signed the purported "releases", I would have been unable to refinance my  
19 home and been unable to pay the \$2,452.00 monthly mortgage payments under the US Bank loan.

20 40. I signed the "releases" solely because I had no other reasonable alternative under the  
21 circumstances. I did not do so voluntarily. The releases were extracted from me.

22 ///

23 ///

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 EXECUTED this 7<sup>th</sup> day of December, 2007 at Vancouver, Washington.  
4

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7 Andrew P. Dickinson  
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1 **CERTIFICATE OF SERVICE**

2  
3 I, Larry E. Hazen, certify under penalty of perjury under the laws of the State of Washington that I  
4 served the foregoing document by the method, on the date, and on each attorney(s) and/or person(s)  
5 identified below.

6 Method of Service:

7 \_\_\_\_\_ By **mailing** a full, true and correct copy of the document in a sealed, first class,  
8 postage prepaid envelope, addressed to each party or attorney shown below, to the last known  
9 address of each party or attorney, and deposited with the United States Post Office in Vancouver,  
10 Washington on the date set forth below.

11 X By causing a full, true and correct copy thereof to be **hand delivered** to the party  
12 or attorney shown below, to the last known address on the date set forth below.

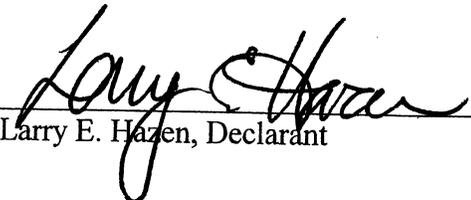
13 \_\_\_\_\_ By sending a full, true and correct copy thereof via **courier** in a sealed envelope,  
14 addressed to the party or attorney as shown below on the date set forth below.

15 \_\_\_\_\_ By **faxing** a full, true and correct copy thereof to the party or attorney at the last  
16 known fax number for the party or attorney on the date set forth below. The receiving fax  
17 machine was operating at the time of service, and the transmission was properly completed.

18 Person or Persons Served:

19 Curtis A. Welch  
20 Quinn H. Posner  
21 Duggan Scholtfeldt & Welch, PLLC  
22 900 Washington Street, Suite 1020  
23 Vancouver, WA 98660

24 DATED this 17<sup>th</sup> day of December, 2007.

25  
26   
Larry E. Hazen, Declarant

**EX. "A"**

**SCANNED**

**FILED**

APR 29 2005

JoAnne McBride, Clerk, Clark Co.

**STATE  
REGISTRY**

**SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY**

In re the Marriage of:

**DARLENE S. DICKINSON,**

**NO. 03-3-01903-5**

**DECREE OF DISSOLUTION  
(DCD)**

**Petitioner,**

and

**ANDREW P. DICKINSON,**

**[ ] Clerk's action required**

**Respondent.**

**05 9 02695 1**

**I. JUDGMENT/ORDER SUMMARIES**

**1.1 RESTRAINING ORDER SUMMARY:**

Restraining Order Summary is set forth below:

Name of person(s) restrained: DARLENE S. DICKINSON and ANDREW P. DICKINSON  
Name of person(s) protected: DARLENE S. DICKINSON and ANDREW P. DICKINSON  
**See paragraph 3.8.**

**VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.8 BELOW WITH ACTUAL  
KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50  
RCW AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.050.**

**1.2 REAL PROPERTY JUDGMENT SUMMARY:**

Real Property Judgment Summary is set forth below:

Darlene Dickinson is awarded the real property located at 9205 Ward Road,  
Vancouver, WA 98682.

Assessor's property tax parcel or account number: 154026-000.0

Or

Legal description of the property awarded (including lot, block, plat, or section, township,  
range, county and state): #103 Sec 1 T2 R2EWM consisting of 1.17 acres, more or less.

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1.3 MONEY JUDGMENT SUMMARY:

Judgment Summary is set forth below.

- |   |                             |              |
|---|-----------------------------|--------------|
| A. Judgment creditor  | Darlene Dickinson           |              |
| B. Judgment debtor  | Andrew Dickinson            |              |
| C. Principal judgment amount  |                             | \$ 50,000.00 |
| D. Interest to date of judgment   |                             | \$           |
| E. Attorney's fees  |                             | \$ 2,500.00  |
| F. Costs  |                             | \$           |
| G. Other recovery amount (March & April, 2005 Maint.)                                     |                             | \$ 800.00    |
| H. Principal judgment shall bear interest at 5% per annum, due date 9/1/05.               |                             |              |
| I. Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum |                             |              |
| J. Attorney for judgment creditor   | J. R. YOSEPH, WSBA #8627    |              |
| K. Attorney for judgment debtor   | STEVEN SOWARDS, WSBA #20815 |              |
| L. Other:   |                             |              |

END OF SUMMARIES

II. BASIS

Findings of Fact and Conclusions of Law have been entered in this case.

III. DECREE

IT IS DECREED that:

3.1 STATUS OF THE MARRIAGE.

The marriage of the parties is dissolved.

3.2 PROPERTY TO BE AWARDED THE HUSBAND.

The husband is awarded as his separate property the property set forth in Exhibit "H". This exhibit is attached or filed and incorporated by reference as part of this decree.

3.3 PROPERTY TO BE AWARDED TO THE WIFE.

The wife is awarded as her separate property the property set forth in Exhibit "W". This exhibit is attached or filed and incorporated by reference as part of this decree.

3.4 LIABILITIES TO BE PAID BY THE HUSBAND.

The husband shall pay the community or separate liabilities set forth in Exhibit "H". This exhibit is attached or filed and incorporated by reference as part of this decree.

Unless otherwise provided herein, the husband shall pay all liabilities incurred by him since the date of separation.

3.5 LIABILITIES TO BE PAID BY THE WIFE.

1 The wife shall pay the community or separate liabilities set forth in Exhibit "W". This  
2 exhibit is attached or filed and incorporated by reference as part of this decree.

3 Unless otherwise provided herein, the wife shall pay all liabilities incurred by her since  
4 the date of separation.

5 3.6 HOLD HARMLESS PROVISION.

6 Each party shall hold the other party harmless from any collection action relating to  
7 separate or community liabilities set forth above, including reasonable attorney's fees  
8 and costs incurred in defending against any attempts to collect an obligation of the  
9 other party.

10 3.7 SPOUSAL MAINTENANCE.

11 The husband shall pay \$ 400.00 maintenance, for 36 months. Maintenance shall be  
12 paid monthly on the first day of each month commencing March 1, 2005.

13 Maintenance is non-modifiable and is terminated upon the death of either party or the  
14 remarriage of the party receiving maintenance unless otherwise specified below:

15 Payments shall be made by the husband directly to the wife by mail. The husband may  
16 deduct from the maintenance payment, the wife child support obligation of \$ 210.37.

17 3.8 CONTINUING RESTRAINING ORDER.

18 A continuing restraining order is entered as follows:

19 The Parties are restrained and enjoined from assaulting, harassing, molesting or  
20 disturbing the peace of the other party.

21 The Parties are restrained and enjoined from going onto the grounds of or entering  
22 the home, work place or school of the other party.

23 **VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.8 WITH ACTUAL  
24 KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER  
25 26.50 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.060.**

26  CLERK'S ACTION. The clerk of the court shall forward a copy of this order, on or before  
27 the next judicial day, to: \_\_\_\_\_ law  
28 enforcement agency which shall enter this order into any computer-based criminal  
intelligence system available in this state used by law enforcement agencies to list  
outstanding warrants. (A law enforcement information sheet must be completed  
by the party or the party's attorney and provided with this order before this  
order will be entered into the law enforcement computer system.)

SERVICE:

The restrained party or attorney appeared in court or signed this order; service of this  
order is not required.

EXPIRATION.

1 This restraining order expires on: \_\_\_\_\_ (month/day/year).

2 This restraining order supersedes all previous temporary restraining orders in this  
3 cause number.

4 3.9 JURISDICTION OVER THE CHILDREN.

5 The court has jurisdiction over the children as set forth in the Findings of Fact and  
6 Conclusions of Law.

7 3.10 PARENTING PLAN.

8 The parties shall comply with the Parenting Plan signed by the court on  
9 4-29-05 [Date]. The Parenting Plan signed by the court  
10 is approved and incorporated as part of this decree.

11 3.11 CHILD SUPPORT.

12 Child support shall be paid in accordance with the order of child support signed by the  
13 court on 4-29-05 [Date]. This order is incorporated as part of  
14 this decree.

15 3.12 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

16 Attorney's fees, other professional fees and costs shall be paid as follows:

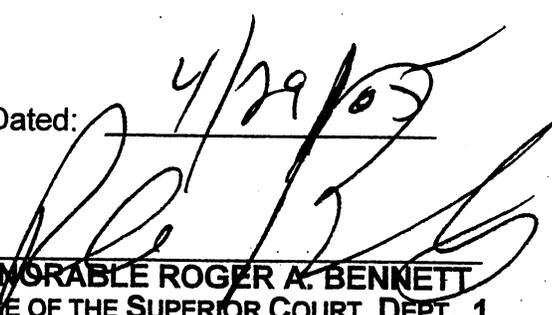
17 Respondent is awarded a judgment for attorneys fees in the sum of \$2,500 for  
18 attorney's fees.

19 3.13 NAME CHANGES.

20 Does not apply.

21 3.14 OTHER.

22 Dated: 4/29/05

23   
24 HONORABLE ROGER A. BENNETT  
25 JUDGE OF THE SUPERIOR COURT, DEPT. 1

26 Presented by: 

27 J. R. YOSEPH, WSBA #  
28 Attorney for the Petitioner

Approved for entry:  
Notice for presentation waived;

  
STEVEN SOWARDS, WSBA #20815  
Attorney for the Respondent

The next line of this document appears on line 1 of page 5.

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*Darlene S. Dickinson*  
DARLENE S. DICKINSON, Petitioner

ANDREW P. DICKINSON, Respondent

**EXHIBIT "H"**

**PROPERTY AWARDED TO THE HUSBAND AS HIS SOLE AND SEPARATE PROPERTY:**

- 1) Residential Property located at 14012 NE 333<sup>rd</sup> Street, Battle Ground, WA;
- 2) 1986 Ford Ranger pick up
- 3) 1991 Ford Crown Victoria
- 4) 1978 Reinell Boat and trailer
- 5) Yamaha Jetski and trailer
- 6) 3 Wheelers (5)
- 7) Assorted Motorcycles (3)
- 8) Truck Camper
- 9) Assorted Hand tools
- 10) 1938 Dodge Truck
- 11) 1968 Ford pickup and Camper
- 12) All interest in the Washington State DRS Retirement Systems Pension Plan in his name.

**DEBTS AWARDED TO THE HUSBAND AS HIS SOLE AND SEPARATE DEBT:**

- 1) South West Washington Medical Center Bill for Jennifer in the approximate sum of \$2200.00
- 2) All debts, mortgages, liens, taxes and liabilities associated with the real property set forth above.
- 3) All debts, mortgages, liens, taxes and liabilities associated with the real property at Ward Road through March 1, 2005.
- 4) All debts incurred by Respondent since the date of separation on June 5, 2003.

**EXHIBIT "W"**

**PROPERTY AWARDED TO THE WIFE AS HER SOLE AND SEPARATE PROPERTY:**

- 1) Real Property at 9205 Ward Road, Vancouver, WA
- 2) Mobile home located on Ward Road Property
- 3) 1991 Pontiac Grand Am
- 4) Horse Trailer
- 5) Motorcycles (2)
- 6) IRS Refund check in the amount of \$800
- 7) Personal Property from family home:
  - Cherry Wood Living Room Couch;
  - Matching Chair with Ottoman;
  - Walnut Coffee Table;
  - Walnut Living Room Lamp;
  - King Size Bed (gift from my father "handmade");
  - Walnut king Size Chair (gift from my father "handmade");
  - Walnut Bedroom Set with Vanity Dresser, Tall Chest and End Table;
  - Homemade Gifts received from Children which are located on top of my Vanity Dresser;
  - Dishes which belonged to my Grandmother;
  - Silverware which belonged to my Grandmother;
  - All personal clothing and toiletries;
  - Kitchen Table and Chairs;
  - Christmas Decorations which belonged to my Grandmother;
  - One large Television
  - One-half (1/2) of the kitchen and cooking utensils including the meat slicer;
  - The barbeque
  - ~~Jennifer's Motorcycle - Honda - gift,~~ *JY SPMB*
  - Picture in living room which belonged to my Grandmother;
  - Petitioner's beauty salon chair;
  - ~~Computer desk which is located downstairs;~~ *SPMB* *JY SPMB*
  - Pink vase and holder;
  - German mugs and holder.
  - 1/2 Wedding Gifts
- 8) Transfer payment to compensate for disproportionate property division per

attached decision by trial judge in the sum of \$50,000, due and payable pursuant to the terms of the judgment set forth herein (Decree at Page 1).

**DEBTS AWARDED TO THE WIFE AS HER SOLE AND SEPARATE DEBT:**

- 1) All debts incurred by her subsequent to date of separation on June 5, 2003.
- 2) Recovery NW
- 3) Clark County Corrections
- 4) All debts, mortgages, liens, taxes and liabilities associated with the real property at Ward Road accruing after March 1, 2005.

**EX. "B"**

June 21, 2005

U. S. Bank Home Mortgage  
Attn: Payment Processing  
4801 Frederica Street  
Owensboro KY 42301

Darlene S Dickinson  
14012 Ne 333rd Street  
Battleground, WA 98604

Loan No: 7884199003  
Loan Type: Conventional  
Product Code: 601  
Inv/Cat: A70/260

RE: Property Address:  
Andrew P Dickinson  
Darlene S Dickinson  
14012 NE 333rd Street  
Battleground WA 98604

14012 Ne 333rd Street  
Battleground WA 98604

Read and Approved By:



This payoff statement reflects the payoff figures as of the date of the statement only. Issuance of this statement does not suspend the contract requirements to make the mortgage payments when due. A late charge of \$ 29.43 will be assessed 15 days after the current payment is due and should be added to the payoff total if the payoff amount is sent after that time.

These figures are payable to June 30, 2005.

This loan is due for the July 01, 2005 payment.

The current First Unpaid Principal Balance is:	\$	96,465.82
Interest at 5.87500% on First Principal Balance:		450.28
Recording Fees		44.00
Misc Fax Fee		20.00

\* \* TOTAL AMOUNT TO PAY LOAN IN FULL \* \* \$ 96,980.10

Payoff funds received after June 30, 2005 will require an additional \$ 15.53 interest per Day on the First Principal Balance.

All figures are subject to change due to loan adjustments, returned bank items, and payment of any escrowed items such as taxes and insurance as they become due. This payoff may be subject to additional fees or costs should your loan be delinquent.

Once the loan is paid in full it immediately becomes the responsibility of the homeowner to obtain and pay property tax bills, homeowner's and flood insurance premiums.

Mortgagors whose loan payment is drafted must advise 15 days prior to the draft date, so the draft can be canceled. Please contact Customer Service at 1-800-365-7772 or you may visit our website at WWW.USBANKHOMEMORTGAGE.COM.

Payoff funds must be sufficient to cover all principal, interest, escrow advances, prepayment penalties, fees and charges. Payoff funds that do not meet these requirements could accrue additional interest.

Please include our loan number on the payoff check. Funds sent by overnight courier or regular mail should be sent to the above address. You must include sufficient interest to allow for mail delivery. Payoff funds are accepted Monday thru Friday between the hours of

8 AM and 4 PM Central Standard Time.

\*\*\* To enhance timely processing of payment in full, the following wiring instructions are provided:

U.S. Bank, Newport KY

ABA: 042000013 Account Number: 194039483 Attn: Payment Processing

RE: Loan Number 7884199003 Mortgagor's Name: Andrew P Dickinson

Payoff statements returned via fax will be charged a \$5.00 fee for FHA loans and a \$20.00 fee for VA and CONV loans. This is a fax fee that is incurred by the party requesting the payoff statement.

**EX. "C"**

8

**FILED**  
**FEB 26 2003**  
JoAnne McBride, Clerk, Clark Co.

**STATE  
REGISTRY**

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK**

**In re the Marriage of:**

**KARI WINTHER-ROY,**  
Petitioner,

and

**RAYMOND G. ROY, JR.,**  
Respondent.

**No. 02-03-01319-5**

**DECREE OF DISSOLUTION  
(DCD)**

**I. JUDGMENT/ORDER SUMMARIES**

**1.1 RESTRAINING ORDER SUMMARY:**

Does not apply.

**1.2 REAL PROPERTY JUDGMENT SUMMARY.**

Real Property Judgment Summary is set forth below

Assessor's property tax parcel or account number:

**1.3 MONEY JUDGMENT SUMMARY:**

Does not apply.

Judgment Summary is set forth below.

A. Judgment creditor

B. Judgment debtor

*DECREE (DCD) (DCLSP) (DCINMG) - Page 1 of 5  
WPF DR 04 0400 (9/2000) - RCW 26 09 030, 040, 070 (3)*

The Scott Horenstein Law Firm, PLLC  
Attorneys At Law  
P O Box 61607  
Vancouver, Washington 98668  
(360) 588-1530

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C. Principal judgment amount  
D. Interest to date of judgment  
E. Attorney's fees  
F. Costs  
G. Other recovery amount  
H. Principal judgment shall bear interest at 12 % per annum  
I. Attorney's fees, costs and other recovery amounts shall bear interest at 12 % per annum  
J. Attorney for judgment creditor  
K. Attorney for judgment debtor  
L. Other:

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*END OF SUMMARIES*

**II. BASIS**

Findings of Fact and Conclusions of Law have been entered in this case.

**III DECREE**

**IT IS DECREED that.**

**3.1 STATUS OF THE MARRIAGE.**

The marriage of the parties is dissolved.

**3.2 PROPERTY TO BE AWARDED THE HUSBAND.**

The husband is awarded as his separate property the property set forth in Exhibit "A." This exhibit is attached or filed and incorporated by reference as part of this decree.

Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3.3 PROPERTY TO BE AWARDED TO THE WIFE.**

1 The wife is awarded as her separate property the property set forth in Exhibit "A." This  
2 exhibit is attached or filed and incorporated by reference as part of this decree.

3 Other:  
4  
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7 **3.4 LIABILITIES TO BE PAID BY THE HUSBAND.**

8 The husband shall pay the community or separate liabilities set forth in Exhibit "A."  
9 This exhibit is attached or filed and incorporated by reference as part of this decree.

10 Other:

11 Unless otherwise provided herein, the husband shall pay all liabilities incurred  
12 by him since the date of separation

13 *Wife forgives separate loan to husband in the amount of \$1,000 in exchange  
14 for full proceeds of trailer sale and pool table.  
15 Husband will refinance Ford van in his name alone within 90 days of entry  
16 of this Decree. If not refinanced, van will be paid off from Husband's share  
17 of Wife's retirement.*

18 **3.5 LIABILITIES TO BE PAID BY THE WIFE.**

19 The wife shall pay the community or separate liabilities set forth in Exhibit "A." This  
20 exhibit is attached or filed and incorporated by reference as part of this decree.

21 Other:

22 Unless otherwise provided herein, the wife shall pay all liabilities incurred by  
her since the date of separation

**3.6 HOLD HARMLESS PROVISION.**

DECREE (DCD) (DCLSP) (DCINMG) - Page 3 of 5  
WPF DR 04 0400 (9/2000) - RCW 26 09 030, 040, 070 (3)

The Scott Horowitz Law Firm, PLLC  
Attorneys At Law  
P.O. Box 61507  
Vancouver, Washington 98666  
(360) 669 1530

1 Each party shall hold the other party harmless from any collection action relating to  
2 separate or community liabilities set forth above, including reasonable attorney's fees  
3 and costs incurred in defending against any attempts to collect an obligation of the  
4 other party.

5 Other:

6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_

10 3.7 SPOUSAL MAINTENANCE.

11 Does not apply.

12 3.8 CONTINUING RESTRAINING ORDER.

13 Does not apply.

14 3.9 PARENTING PLAN.

15 The parties shall comply with the Parenting Plan signed by the court on this date. The  
16 Parenting Plan signed by the court is approved and incorporated as part of this decree.

17 3.10 CHILD SUPPORT

18 Child support shall be paid in accordance with the order of child support signed by the  
19 court on \_\_\_\_\_. This order is incorporated as part of this decree.

20 3.11 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

21 Does not apply.

22 3.12 NAME CHANGES.

The wife's name shall be changed to KARI WINTHER.

///

1 3.13 OTHER.

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6 Each party shall execute any and all documents necessary to effectuate the provisions  
7 of the Decree of Dissolution of Marriage, including, but not limited to quit claim  
8 deeds and other documents of title and Qualified Domestic Relations Order(s). If a  
party fails to execute any necessary documents, the Court may, on its motion docket,  
appoint another in that person's stead to execute such document(s).

9 DONE in Open Court this 25 day of Feb, 2003.

10 James E. Rulli  
11 THE HONORABLE JAMES E. RULLI,  
JUDGE

12 Presented by: THE SCOTT HORENSTEIN LAW FIRM, Approved as to form,  
13 by Notice of presentation waived

14 Katharine W. Mathews  
15 KATHARINE W. MATHEWS  
16 W.S.B.A. No. 20805  
Of Attorneys for Petitioner

14 Suzan L. Clark  
15 SUZAN L. CLARK  
16 W.S.B.A. No. 17476  
Attorney for Respondent

17 Kari Winther-Roy  
18 KARI WINTHER-ROY  
19 Petitioner

17 Raymond G. Roy  
18 RAYMOND G. ROY  
19 Respondent

**COMMUNITY AND SEPARATE PROPERTY AND LIABILITIES**  
**Decree of Dissolution**  
**Exhibit "A"**

Description of Item	FMV	Net Value	Husband	Wife
<b>Real Estate/Business</b>				
1911 N E Landover Drive	\$134,900	\$15,000		\$15,000
Ray's Carpet Cleaning	\$15,000	\$15,000	\$15,000	
Net Proceeds <i>Toppen v Roy</i>			XX	XX
<b>Bank &amp; Retirement Accts.</b>				
* Edward Jones IRA (approximate)	<i>See below</i>	22,112	<del>14,056</del>	<del>14,056</del>
Proceeds Trailer Sale	1,600	1,600		1600
<b>Vehicles/RVs/Boats</b>				
1997 Ford Cargo Van (Business)		1,500	1,500	
Chevy Tahoe			XX	
2000 Toyota Camry (leased)				XX
<b>Personal Property</b>				
Household Goods				
Each awarded goods in possession, except as listed.				XX
<i>Pool table</i>				
<i>See Exhibit "D" attached</i>				

**Total Community Assets**

\* *IRA: Husband to receive \$12,000 from Wife's retirement IRA, through Qualified Domestic Relations Order, provided that '97 Ford Van is refinanced into his name within 90 days of entry of this Decree. If not refinanced, Wife to cash out from Husband's portion a sum sufficient to pay off van and cover all tax liabilities. Wife shall cash out \$12,000, pay off van and give any remainder to husband.*

*AM*

*AM*

*Wife will make good faith effort to refinance mortgage in her sole name.*

**COMMUNITY AND SEPARATE PROPERTY AND LIABILITIES**  
**Decree of Dissolution**  
**Exhibit "A"**

**Separate Assets**

Description of Item	FMV	Debt	Net Value	Husband	Wife	Exhibit
<b>Husband's Separate Assets</b>						
Property acquired after date of separation						
<b>Husband Total Separate</b>			\$0	0	\$0	

<b>Wife's Separate Assets</b>						
Edward Jones Inheritance			68264		68264	
Edward Jones IRA earned prior to marriage			25740		25740	
Household furnishings from prior to marriage						
2002 Camry (lease)						
<b>Wife Total Separate</b>						

**TOTAL ASSETS** \$0

**LIABILITIES**

Description of Debt	Debt	Husband	Wife
---------------------	------	---------	------

**Community Liabilities**

Creditor	Balance	Husband	Wife
Washington Mutual	\$120,000		\$120,000
Bank of America (Tahoe)	6,000	6,000	
CSECU (Ford Van)	8,200	8,200	
Morse & Bratt	20,000	10,000	10,000
MSW Washington Med	75	-38	-37
AT&T Master Card	700	350	350
All liability related to Reef Carpet		XXX	

**Total Community Liabilities**

**Separate Liabilities**

**Husband's Separate Liabilities**

Since date of separation

**Wife's Separate Liabilities**

CSECU	1,250		1250
AT&T Master Card	3,000		3000

**Total Separate Liabilities**

**TOTAL LIABILITIES**

## Exhibit "D"

~~Separate Property (Gifts & property owned by Respondent before marriage):~~

DVD Player  
Bike  
Grinder  
Pool table & pool equipment  
Router & router table H  
Rip saw H  
Standing lights H  
Pool table light made by Respondent's father H  
Fax phone H  
Cordless drill H  
Lawn mower H  
Jig saw H  
Hand power saw H  
Level H  
Hand tools (wrenches, screw drivers, etc.) H  
Bowling ball & case H

H      W  
X  
X  
X      X

~~Community personal property Respondent would like awarded to him:~~

37" color television & stand H — W  
Computer & printer H  
Stereo receiver & speakers H  
Dining room set W  
VCR H  
File cabinets H  
Step ladder W  
Rip saw H  
Leaf blower H  
Miter saw H  
Vibrating sander H  
Belt sander H  
Love seat & couch W  
Entertainment center W

*[Handwritten signature]*



SCOT HORENSTEIN

D

3638653

Page: 1 of 1  
05/14/2003 04:38P  
19.00 Clark County, WA

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**  
Kari Winther  
1911 NE Landover Drive  
Vancouver, WA 98684

Real Estate Excise Tax  
Ch. 11 Rev. Laws 1951

EXEMPT

Afta. # 518784 Date 5-16-03  
For Details of tax paid see

Afta. # \_\_\_\_\_  
Doug Lasher  
Clark County Treasurer

By [Signature] Deputy

**QUIT CLAIM DEED**

Grantor: **RAYMOND G. ROY, JR.**  
Grantee: **KARI WINTHER**  
Abbreviated Legal: **LANDOVER HILLS LOT 1**  
Assessor's Tax Parcel #: **110172002**

THE GRANTOR, Raymond G. Roy, Jr., for transfer of property, convey and quit claim to Kari Winther, as Grantee, the following-described real estate, situated in the County of Clark, State of Washington, including any interest therein which Grantor may hereafter acquire:

LOT 1, LANDOVER HILLS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME "G" OF PLATS, PAGE 293, RECORDS OF CLARK COUNTY, WASHINGTON.

This Deed is given pursuant to the Decree of Dissolution entered in Clark County Superior Court Cause No. 02-3-01319-5 on February 26, 2003.

DATED: this 12 day of May, 2003.

RAYMOND G. ROY, JR.:

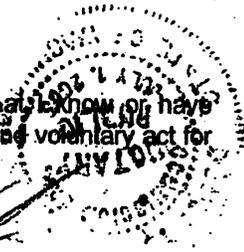
[Signature: Raymond G. Roy Jr.]

STATE OF WASHINGTON )  
 )  
: ss.  
County of Clark )

I certify that Raymond G. Roy, Jr. appeared personally before me and that I know or have satisfactory evidence that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 12 day of May, 2003.

[Signature]  
Notary Public for the State of Washington  
Residing at Vancouver  
My commission expires 7/1/03



**EX. “D”**

Name: Andrew P. Dickinson  
Address: 14012 NE 333rd Street  
City, State: Battie Ground, WA 98604

569456  
Real Estate Excise Tax  
Ch. 11 Rev. Laws 1961  
EXEMPT  
Art. # 569456 Date 6/28/05  
For Details of tax please  
Art. # 2  
Doug Leisher  
Clark County Treasurer  
By DRS Deputy

L38184 PAB

(73)

CHICAGO TITLE INSURANCE COMPANY  
QUIT CLAIM DEED

THE GRANTOR Andrew P. Dickinson, as his separate estate

for and in consideration of love and affection

conveys and quit claims to Andrew P. Dickinson, a single person and Karl N. Wnther, a single person the following described real estate, situated in the County of Clark, State of Washington, including any after acquired title:

SEE EXHIBIT 'A' ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

Tax Account No.: 221509-000

Abbreviated Legal: Section: 2 Township: 4 Range: 2 East  
Abbreviated Legal: Tax lot 58

Dated: June 20, 2005

Andrew P. Dickinson  
Andrew P. Dickinson

STATE OF WASHINGTON  
COUNTY OF CLARK  
I certify that I know or have satisfactory evidence that Andrew P. Dickinson the person(s) who appeared before me and said person(s) acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes therein mentioned in this instrument.  
Dated: JUNE 22, 2005  
Patricia Brandemuhl  
Notary Public in and for the State of Washington  
Residing at Vancouver  
My appointment expires: August 9, 2007

PATRICIA BRANDEMUHL  
NOTARY PUBLIC  
STATE OF WASHINGTON  
COMMISSION EXPIRES  
AUGUST 9, 2007



4009331

Page: 2 of 4

06/28/2005 11:20A  
Clark County, WA

CHICAGO TITLE INSURANCE D 22.00

EXHIBIT 'A'

That portion of the North half of Section 2, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of 06°01'56" for an arc length of 103.69 feet the long chord of which bears North 10°16'02" East 103.65 feet; thence North 13°17'00" East along said right of way line 276.31 feet to the Southeast corner of a tract of land conveyed to Pete Schauer, et ux, by deed recorded under Auditor's File Number 8408160017; thence South 89°42'58" West parallel to the South line of the Northeast quarter of said Section 2 along the South line of said Schauer tract 846.47 feet; thence North 01°33'13" East parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 724.83 feet to the TRUE Point of Beginning; thence continuing North 01°33'13" East 241.57 feet to the North line of the Southwest quarter of the Northeast quarter of said Section 2; thence North 89°49'41" West along said North line 531.93 feet to the Northwest corner of the Southwest quarter of the Northeast quarter of said Section 2; thence North 89°48'12" West along the North line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 395.15 feet; thence South 01°33'13" West parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 243.45 feet; thence South 89°56'00" East 927.13 feet to the TRUE Point of Beginning.

TOGETHER WITH and reserving unto the grantors, their heirs and assigns the rights and interest in and to the following easements:

A 60 foot easement for ingress, egress and utilities over under and across a strip of land 60.00 feet wide being 30.00 feet on either side of the following described centerline:

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of 06°01'56" for an arc length of 103.69 feet the long chord of which bears North 10°16'02" East 103.65 feet; thence North 13°17'00" East along said right of way line 554.12 feet to the TRUE Point of Beginning of said centerline; thence North 76°43'00" West 17.88 feet; thence along the arc of a 250.00 foot radius curve to the right through a central angle of 19°07'36" for an arc distance of 83.46 feet; thence North 57°35'24" West 263.83 feet; thence along the arc of a 200.00 foot radius curve to the left through a central angle of 32°27'32" for an arc distance of 113.30 feet; thence South 89°57'04" West 2326.49 feet to a point 1.00 feet East of the West line of the Southeast quarter of the Northwest quarter of said Section 2 and the terminus of said centerline.

EXHIBIT B  
PAGE 2



ALSO an easement for ingress, egress and utilities, landscaping and entrance sign or structure over, under and across the following described parcels:

PARCEL 1

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of 06°01'56" for an arc length of 103.69 feet the long chord of which bears North 10°16'02" East 103.65 feet; thence North 13°17'00" East along said right of way line 494.12 feet to the TRUE Point of Beginning; thence continuing along said right of way line North 13°17'00" East 30.00 feet to the Southerly line of a 60.00 foot easement previously described; thence North 76°43'00" West along the Southerly line of said easement 17.88 feet; thence along said Southerly line of said easement along the arc of a 280.00 foot radius curve to the right through a central angle of 06°34'22" for an arc distance of 32.12 feet; thence South 44°11'27" East 59.22 feet to the TRUE Point of Beginning.

PARCEL 2

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of 06°01'56" for an arc length of 103.69 feet the long chord of which bears North 10°16'02" East 103.65 feet; thence North 13°17'00" East along said right of way line 584.12 feet to the TRUE Point of Beginning, said point being on the Northerly line of the 60.00 foot easement previously described; thence North 76°43'00" West along the Northerly line of said easement 17.88 feet; thence along the Northerly line of said easement along the arc of a 220.00 foot radius curve to the right through a central angle of 08°21'55" for an arc distance of 32.12 feet; thence North 74°16'38 East 57.04 feet to a point on the Westerly right of way line of said Old County Road No. 5; thence South 13°17'00" West along said Westerly line 30.00 feet to the TRUE Point of Beginning.

TOGETHER WITH and reserving unto the grantors, their heirs and assigns' the rights and interest in and to the following easements:

A 30.00 foot easement for ingress, egress and utilities over under and across a strip of land 30.00 feet wide being the East 30.00 feet of the South 365.00 feet of the following described tract:

That portion of the North half of Section 2, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington described as follows:

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through

a central angle of  $06^{\circ}01'56''$  for an arc length of 103.69 feet the long chord of which bears North  $10^{\circ}16'02''$  East 103.65 feet; thence North  $13^{\circ}17'00''$  East along said right of way line 276.31 feet to the Southeast corner of a tract of land conveyed to Pete Schauer, et ux by deed recorded under Auditor's File Number 8408160017; thence South  $89^{\circ}42'58''$  West parallel to the South line of the Northeast quarter of said Section 2 along the South line of said Schauer tract 1773.77 feet; thence North  $01^{\circ}33'13''$  East parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 487.07 feet to the TRUE Point of Beginning; thence continuing North  $01^{\circ}33'13''$  East 486.89 feet to the North line of the Southeast quarter of the Northwest quarter of said Section 2; thence North  $89^{\circ}48'12''$  West along said North line 463.54 feet; thence South  $01^{\circ}33'13''$  West parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2 a distance of 488.88 feet; thence North  $89^{\circ}57'04''$  East 463.59 feet to the TRUE Point of Beginning.

ALSO conveying the right to build a fence on the North 121.55 feet of said 30 foot easement along the West side of the existing driveway.

**EX. "E"**



CHICAGO TITLE INSURANCE

Borrower
Settlement Statement
Folder Number: L36164

Settlement Date: 06/27/05 Disbursement Date: 06/27/05 Final

Name and Address of Borrower(s): Andrew P. Dickinson and Kari N. Winther
14012 NE 333rd Street
Battle Ground, WA 98604

Property Location(s): 14012 NE 333rd Street
Battle Ground, WA 98604

Settlement Agent: Chicago Title Insurance Company
10000 NE 7th Avenue, Suite 400
Vancouver, WA 98685
Contact: Hazel Dell at (360)546-1999

FINAL

Table with columns: Description, (POC) Borrower Debit, Borrower Credit. Rows include Application Funds, NEW LOAN(S), U.S. Bank N.A., ITEMS PAYABLE IN CONNECTION WITH LOAN, ITEMS PAID IN ADVANCE, RESERVES DEPOSITED WITH LENDER, PAYOFF(S), and TITLE CHARGES.

Description	(POC)	Borrower Debit	Borrower Credit
Coverage		\$355,000.00	
Premium		\$513.00	
Tax		\$39.50	
to Chicago Title Insurance Company			
Reconveyance Trustees Fee			100.00
to CTIC Reconveyance Dept.			
Delivery Fee			53.85
Sales Tax	\$3.85		
to Chicago Title Insurance Company			
e-mail/download			53.85
Sales Tax	\$3.85		
to Chicago Title Insurance Company			
<b>GOVERNMENT RECORDING AND TRANSFER CHARGES</b>			
Recording Fee			
Deed		20.00	
Mortgage		40.00	
Excise Tax 1.78		2.00	
to Clark County Treasurer			
<b>ADDITIONAL SETTLEMENT CHARGES</b>			
Judgement Andrew Dickinson		51,633.37	
to Law Office of J.R. Yoseph in trust for Darlene Dickinson			
Judgement Darlene Dickinson		1,666.63	
to Crime Victims Compansation			
Consumer Debt GEMB/JCP		317.24	
to GEMB/JCP			
Consumer Debt Nordstrom		165.72	
to Nordstrom			
Consumer Debt Target		269.11	
to Target			
Consumer Debt Medical		2,230.00	
to DCS Financial, Inc.			
Consumer Debt CBUSASears		1,948.84	
to CBUSASears			
Due From Borrower		287,016.09	
Total Paid By/For Borrower			355,386.92
Due From Borrower		287,016.09	
Total Paid By/For Borrower			355,386.92
Net To Borrower		68,370.83	

**CHICAGO TITLE - VANCOUVER**  
**US BANK - OUTGOING WIRE TRANSFER**  
**TO BE COMPLETED BY ESCROW**

Branch: Hazel Dell

Order No.: L36164PAB

INDICATE IF WIRE OR TELEPHONE TRANSFER

WIRE:

TELEPHONE TRSF:

Escrow No.: L36164PAB

Fedwire No. \_\_\_\_\_

Control No. \_\_\_\_\_

Amount: \$ 68,370.83

Date of Wire: June 27, 2005

Email Confirmation to:

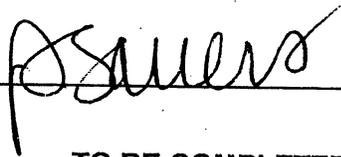
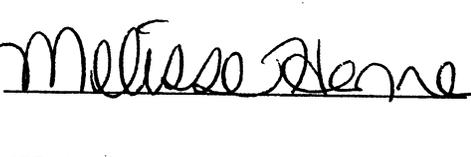
Enter email address(es)

Debit Account No. 153592609918

Beneficiary Bank ABA# 323284150  
Beneficiary Bank Name: NW Corporate Federal Credit Union  
Beneficiary Bank City, State, Zip: Portland, OR  
Beneficiary Account Number: 323383378  
Beneficiary Name: Kari Winther  
Beneficiary Address: 1911 Landover Drive  
Beneficiary City, State, Zip: Vancouver, WA 98684

Intermediary Bank Name: \_\_\_\_\_  
Intermediary Bank ABA: \_\_\_\_\_  
Intermediary Bank City, State, Zip: \_\_\_\_\_

Text Line #1 : Further credit to Kari Winther acc# 800207951 @ IQ Credit Union  
Text Line #2 :

Prepared by:  Approved by: 

**TO BE COMPLETED BY SYSTEM INITIATOR**

Initiator: \_\_\_\_\_ Time: \_\_\_\_\_

**TO BE COMPLETED BY ACCOUNTING DEPARTMENT**

Funds Verified by: \_\_\_\_\_ Time: \_\_\_\_\_

**TO BE COMPLETED BY BANK EMPLOYEE**

Completed By: \_\_\_\_\_ Time: \_\_\_\_\_

**Winegarden, Nadine**

---

**From:** Fife, Summer  
**Posted At:** Wednesday, June 29, 2005 9:01 AM  
**Conversation:** L36164-PAB ICN#000359 \$68,370.83 NW Corporate Credit Union  
**Posted To:** Outgoing Wire Confirmation- VANCOUVER  
  
**Subject:** L36164-PAB ICN#000359 \$68,370.83 NW Corporate Credit Union

**NOTE**

**JUNE 20, 2005**  
[Date]

**VANCOUVER**  
[City]

**WASHINGTON**  
[State]

**14012 NE 333RD STREET, BATTLE GROUND, WASHINGTON 98604**  
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ **355,000.00** (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **U.S. BANK N.A.**

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **5.500 %**.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the **FIRST** day of each month beginning on **AUGUST 1, 2005**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **JULY 1, 2035**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **P.O. BOX 20005, OWENSBORO, KY 42304-0005** or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ **2,015.65**

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT



## 5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

## 6. BORROWER'S FAILURE TO PAY AS REQUIRED

### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **FIFTEEN** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000** % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

## 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

## 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

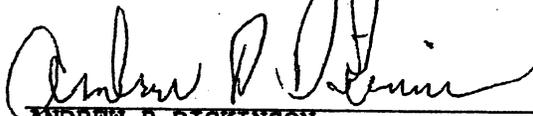
**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

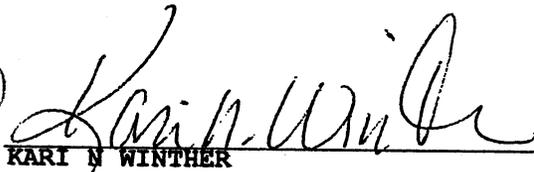
If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

  
ANDREW P. DICKINSON

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

  
KARI N. WINTHER

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

*[Sign Original Only]*

Return To: U.S. BANK N.A.  
1550 AMERICAN BLVD EAST  
BLOOMINGTON MN 55425

Assessor's Parcel or Account Number: 221509 000 LOAN: # 7884362079  
Abbreviated Legal Description: SECTION:2 TOWNSHIP:4 RANGE:2 EAST OTHER:TAX LOT 58

[Include lot, block and plat or section, township and range] Full legal description located on page 3  
Trustee: BRIAN LYNCH Additional Grantees located on page  
L3L1114PAB [Space Above This Line For Recording Data]

DEED OF TRUST  
MIN 100021278843620795

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated JUNE 20, 2005 together with all Riders to this document.
- (B) "Borrower" is  
ANDREW P DICKINSON ASINGLE PERSON KARI N WINTHER, A SINGLE PERSON

Borrower is the trustor under this Security Instrument.  
(C) "Lender" is U.S. BANK N.A.

WASHINGTON -Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

VMP-6A(WA) (0012) Form 3048 1/01  
Page 1 of 15 Initials: *ADK*

VMP MORTGAGE FORMS - (800)521-7291



Lender is a **NATIONAL ASSOCIATION**  
organized and existing under the laws of **THE UNITED STATES OF AMERICA**  
Lender's address is **4801 FREDERICA STREET, OWENSBORO, KY 42301**

(D) "Trustee" is **BRIAN LYNCH**

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **JUNE 20, 2005**

The Note states that Borrower owes Lender **THREE HUNDRED FIFTY FIVE THOUSAND AND NO/100** Dollars  
(U.S. \$ **355,000.00** ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JULY 1, 2035**

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the PUBLIC RECORDS of CLARK COUNTY :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

PLEASE SEE ATTACHED LEGAL DESCRIPTION

Parcel ID Number: 221509 000  
14012 NE 333RD STREET  
BATTLE GROUND  
("Property Address"):

which currently has the address of  
[Street]  
[City] , Washington 98604 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any

time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees, and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to

hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless

Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure.

There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check

or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of

release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

**23. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

**24. Substitute Trustee.** In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Use of Property. The Property is not used principally for agricultural purposes.

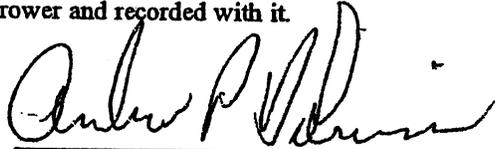
26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_

  
\_\_\_\_\_  
ANDREW P DICKINSON (Seal)  
-Borrower

\_\_\_\_\_

  
\_\_\_\_\_  
KARL N WINTHER (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

STATE OF WASHINGTON

County of CLARK

} ss:

On this day personally appeared before me

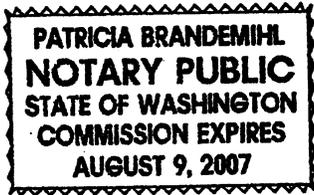
ANDREW P DICKINSON

AND KARI N WINTHER

to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this

22 day of JUNE 2005.



*Patricia Brandemuhl*

Notary Public in and for the State of Washington, residing at

VANCOUVER

My Appointment Expires on

8-9-2007

*AD KW*

CHICAGO TITLE INSURANCE COMPANY

EXHIBIT A

DESCRIPTION:

ORDER NO.: L36164

That portion of the North half of Section 2, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North  $89^{\circ}42'58''$  East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of  $06^{\circ}01'56''$  for an arc length of 103.69 feet the long chord of which bears North  $10^{\circ}16'02''$  East 103.65 feet; thence North  $13^{\circ}17'00''$  East along said right of way line 276.31 feet to the Southeast corner of a tract of land conveyed to Pete Schauer, et ux, by deed recorded under Auditor's File Number 8408160017; thence South  $89^{\circ}42'58''$  West parallel to the South line of the Northeast quarter of said Section 2 along the South line of said Schauer tract 846.47 feet; thence North  $01^{\circ}33'13''$  East parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 724.83 feet to the TRUE Point of Beginning; thence continuing North  $01^{\circ}33'13''$  East 241.57 feet to the North line of the Southwest quarter of the Northeast quarter of said Section 2; thence North  $89^{\circ}49'41''$  West along said North line 531.93 feet to the Northwest corner of the Southwest quarter of the Northeast quarter of said Section 2; thence North  $89^{\circ}48'12''$  West along the North line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 395.15 feet; thence South  $01^{\circ}33'13''$  West parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 243.45 feet; thence South  $89^{\circ}56'00''$  East 927.13 feet to the TRUE Point of Beginning.

TOGETHER WITH and reserving unto the grantors, their heirs and assigns the rights and interest in and to the following easements:

A 60 foot easement for ingress, egress and utilities over under and across a strip of land 60.00 feet wide being 30.00 feet on either side of the following described centerline:

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North  $89^{\circ}42'58''$  East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of  $06^{\circ}01'56''$  for an arc length of 103.69 feet the long chord of which bears North  $10^{\circ}16'02''$  East 103.65 feet; thence North  $13^{\circ}17'00''$  East along said right of way line 554.12 feet to the TRUE Point of Beginning of said centerline; thence North  $76^{\circ}43'00''$  West 17.88 feet; thence along the arc of a 250.00 foot radius curve to the right through a central angle of  $19^{\circ}07'36''$  for an arc distance of 83.46 feet; thence North  $57^{\circ}35'24''$  West 263.83 feet; thence along the arc of a 200.00 foot radius curve to the left through a central angle of  $32^{\circ}27'32''$  for an arc distance of 113.30 feet; thence South  $89^{\circ}57'04''$  West 2326.49 feet to a point 1.00 feet East of the West line of the Southeast quarter of the Northwest quarter of said Section 2 and the terminus of said centerline.

CHICAGO TITLE INSURANCE COMPANY

EXHIBIT A

ORDER NO: L36164

Continued...

ALSO an easement for ingress, egress and utilities, landscaping and entrance sign or structure over, under and across the following described parcels:

PARCEL 1

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of 06°01'56" for an arc length of 103.69 feet the long chord of which bears North 10°16'02" East 103.65 feet; thence North 13°17'00" East along said right of way line 494.12 feet to the TRUE Point of Beginning; thence continuing along said right of way line North 13°17'00" East 30.00 feet to the Southerly line of a 60.00 foot easement previously described; thence North 76°43'00" West along the Southerly line of said easement 17.88 feet; thence along said Southerly line of said easement along the arc of a 280.00 foot radius curve to the right through a central angle of 06°34'22" for an arc distance of 32.12 feet; thence South 44°11'27" East 59.22 feet to the TRUE Point of Beginning.

PARCEL 2

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North 89°42'58" East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of 06°01'56" for an arc length of 103.69 feet the long chord of which bears North 10°16'02" East 103.65 feet; thence North 13°17'00" East along said right of way line 584.12 feet to the TRUE Point of Beginning, said point being on the Northerly line of the 60.00 foot easement previously described; thence North 76°43'00" West along the Northerly line of said easement 17.88 feet; thence along the Northerly line of said easement along the arc of a 220.00 foot radius curve to the right through a central angle of 08°21'55" for an arc distance of 32.12 feet; thence North 74°16'38" East 57.04 feet to a point on the Westerly right of way line of said Old County Road No. 5; thence South 13°17'00" West along said Westerly line 30.00 feet to the TRUE Point of Beginning.

TOGETHER WITH and reserving unto the grantors, their heirs and assigns' the rights and interest in and to the following easements:

A 30.00 foot easement for ingress, egress and utilities over under and across a strip of land 30.00 feet wide being the East 30.00 feet of the South 365.00 feet of the following described tract:

CHICAGO TITLE INSURANCE COMPANY

EXHIBIT A

ORDER NO: L36164

Continued...

That portion of the North half of Section 2, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington described as follows:

BEGINNING at the Southwest corner of the Northeast quarter of said Section 2; thence North  $89^{\circ}42'58''$  East along the South line of the Northeast quarter of said Section 2, a distance of 1318.67 feet to the West right of way line of Old County Road No. 5 (now State Highway 503); thence along said right of way line along the arc of a 984.93 foot radius curve to the right through a central angle of  $06^{\circ}01'56''$  for an arc length of 103.69 feet the long chord of which bears North  $10^{\circ}16'02''$  East 103.65 feet; thence North  $13^{\circ}17'00''$  East along said right of way line 276.31 feet to the Southeast corner of a tract of land conveyed to Pete Schauer, et ux by deed recorded under Auditor's File Number 8408160017; thence South  $89^{\circ}42'58''$  West parallel to the South line of the Northeast quarter of said Section 2 along the South line of said Schauer tract 1773.77 feet; thence North  $01^{\circ}33'13''$  East parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2, a distance of 487.07 feet to the TRUE Point of Beginning; thence continuing North  $01^{\circ}33'13''$  East 486.89 feet to the North line of the Southeast quarter of the Northwest quarter of said Section 2; thence North  $89^{\circ}48'12''$  West along said North line 463.54 feet; thence South  $01^{\circ}33'13''$  West parallel to the West line of the Southeast quarter of the Northwest quarter of said Section 2 a distance of 488.88 feet; thence North  $89^{\circ}57'04''$  East 463.59 feet to the TRUE Point of Beginning.

ALSO conveying the right to build a fence on the North 121.55 feet of said 30 foot easement along the West side of the existing driveway.

**EX. "F"**



P.O. Box 20005  
Owensboro, KY 42304

**Home Mortgage**

MARCH 14, 2007

88817 000137 CA020  
ANDREW P DICKINSON  
KARI N WINTHER  
14012 NE 333RD ST  
BATTLE GROUND WA 98604

RE: MORTGAGE LOAN NUMBER: 7884362079  
PROPERTY ADDRESS: 14012 NE 333RD STREET  
BATTLE GROUND WA 98604

DEAR ANDREW P DICKINSON :

YOUR FUNDS HAVE BEEN RETURNED BY YOUR BANK DUE TO 'INSUFFICIENT FUNDS'. IF YOU HAVE NOT ALREADY DONE SO, PLEASE REMIT CERTIFIED FUNDS FOR THE TOTAL AMOUNT DUE AS INDICATED BELOW TO BRING YOUR ACCOUNT CURRENT.

NUMBER OF PAYMENTS DUE:	1	
PAYMENT(S) AMOUNT DUE:		2,452.01
RETURN ITEM FEE:		27.50
LATE CHARGE FEE:		100.78

TOTAL AMOUNT DUE: \$ 2,580.29

PLEASE UNDERSTAND THAT THE ABOVE TOTAL DOES NOT REFLECT ANY INSPECTION FEES THAT MAY HAVE BEEN ASSESSED ON THE ACCOUNT. YOUR NEXT PAYMENT DUE IS MARCH 01, 2007. PLEASE FORWARD FUNDS TO THE ADDRESS BELOW:

U. S. BANK HOME MORTGAGE  
4801 FREDERICA STREET  
OWENSBORO, KY 42301

FOR DRAFT ACCOUNTS, THE DRAFT FOR YOUR MORTGAGE PAYMENT WILL CEASE UNTIL YOUR RETURNED DRAFT HAS BEEN REPLACED AND YOUR LOAN IS CURRENT. PLEASE BE ADVISED THAT THREE RETURNS WITHIN SIX MONTHS WILL RESULT IN AN IMMEDIATE CANCELLATION OF YOUR AUTOMATIC PAYMENT PROGRAM.

WE ARE ATTEMPTING TO COLLECT A DEBT, ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL US AT 1-800-365-7900.

SINCERELY,

*Anne Colignon*

ADMINISTRATIVE SPECIALIST  
COLLECTION DEPARTMENT  
CA020/ /028/CPI

**EX. "G"**

# Closed Account Form

Account 131626

Closing Amount \$ 325.93

Account Owners: **ANDY P DICKINSON**  
**KARIN WINTHER**

Reason the account is being closed: CLOSED - TRANSFER TO ANOTHER iQCU ACCT

Other Notes:

**Automatic Deposits or Withdrawals**

I understand that if I have any automatic deposits or withdrawals associated with this account, I must contact the originator to cancel. In particular, I understand that deposit of payroll, social security, retirement, etc. should be set up at a subsequent institution before closing this account. *If the Credit Union receives a direct deposit after this account is closed, the Credit Union must send the funds back to the originator. This can cause delays in receipt of funds.*

**Acknowledgment**

I acknowledge full responsibility of destruction of all plastic cards still in my possession issued on this account number. I understand I need to contact the appropriate merchants to cancel any recurring charges that post to my account and will be responsible for all unauthorized transactions/charges that may attempt to clear my account even after closure.

  
\_\_\_\_\_  
KARIN WINTHER

Def Resp to 1st Disc  
D00006

**CU Use Only**

Name of User  
GWEN PAPANFUSE

User ID  
204

Today's Date  
03/14/07

Forward to Scanning

**EX. "H"**

**Home Mortgage**

Apr 11 10, 2007

94732 006291 xc505

Andrew P Dickinson  
Kari N Winther

14012 NE 333rd St  
Battle Ground WA 98604

RE: Loan No. 7884362079

Dear Mortgagor(s):

Our records indicate your mortgage payments are delinquent. The total amount due to bring your account current is \$ 5133.08. Please remit the total amount due today to avoid further legal action, which could result in additional expenses to reinstate your loan.

If you have already remitted the total amount due, please contact our office and provide us with that information. Please be advised that this default may have resulted in negative credit bureau reporting.

If there has been a temporary financial problem, or an extraordinary situation that has caused you to be unable to make your monthly payments, relief measures may be available to you. A HUD approved counseling agency is available to assist you. You may contact our Loan Counseling department at 800-365-7900 for an agency listing in your area or for assistance through our company. You may also contact the HUD toll-free telephone number (800) 569-4287 to obtain a listing of the HUD-approved nonprofit organizations.

If you are a servicemember and/or their dependents and require additional assistance, please contact the toll-free military one-source number at (800) 342-9647.

Sincerely,

*Lori Edwards*

Lori Edwards  
Vice President  
Loan Counseling  
1-800-365-7900  
xc505

Property inspections will be completed on all delinquent loans.

We are attempting to collect a debt, any information obtained will be used for that purpose.